SUPREME COURT, U. S.

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In The

Supreme Court of the United States

October Term, 1957

No. 716

WILLIAM R. JACKSON,
WILLIAM R. & ALICE J. JACKSON,
CLEVELAND CHAIR COMPANY,

Petitioners,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

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IN THE

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No.

WILLIAM R. JACKSON,
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Petitioners

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Petitioners pray that a writ of Certiorari issue to review the Judgment entered July 14, 1967, by the United States Court of Appeals for the Sixth Circuit (hereinafter called

"Sixth Circuit") in Case Nos. 17023, 17024, and 17025 in that court, filed by the above captioned Petitioners respectively against the Respondent, and consolidated for hearing, decision and judgment. The said judgment of the Sixth Circuit affirmed decisions entered August 3, 1965 in the Tax Court of the United States in the three cases (Docket Nos. 70811, 70812 and 70813 in the Tax Court) in favor of Respondent, for tax deficiencies and fraud penalties, which total approximately $1,400,000.00 to date including interest.

A certified transcript of the record in said cases (including the proceedings, opinion and judgment in the Sixth Circuit, and a joint appendix filed with said court), is furnished herewith in accordance with this Court's Rules.

OPINIONS BELOW

The Sixth Circuit's Opinion appears in Appendix A to this Petition at A1-A7. * The Opinion has not been officially reported, so far as Petitioners have been able to determine at the time of printing, but is unofficially reported in 67-2 USTC Para. 9557.

The Memorandum Findings of Fact and Opinion of the Tax Court of the United States is officially designated as T.C. Memo 1964-330 filed December 23, 1964, and is unofficially reported at 23 T.C.M. 2022. The Tax

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* The page references to Appendix A to this Petition will be designated, e.g. "A3".

Court's said Memorandum Findings of Fact and Opinion is to be found in separate Appendix B hereto beginning at page 1183a. **

JURISDICTION

The Judgment of the Sixth Circuit was dated and entered on July 14, 1967 (A8-A10). The jurisdiction of this Court is invoked under 28 U.S.C., Section 7482.

QUESTIONS PRESENTED

1. In a tax fraud case, the taxpayers freely admitted that the gross sales of their two furniture manufacturing businesses had been understated on their tax returns in each of certain years in question during World War II, but claimed offsetting and previously unclaimed deductions by reason of the use of the proceeds of these unreported sales to make purchases of raw materials on the "Black Market". Both the Tax Court and the Sixth Circuit found proof of existence of fraud but

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** Appendix B hereto is a separate volume which is the same as Volume III of the Certified Joint Appendix (pages 1093a-1263a) in the Sixth Circuit. It contains copies of certain important Exhibits in addition to the Tax Court's Memorandum Findings of Fact and Opinion, Decisions, and the Petitions for Review to the Sixth Circuit. Page references to Appendix B, as well as to the entire Certified Joint Appendix, will be designated, e.g. "1183a". Any reference to 1093a or above, may be found in Appendix B hereto, as well as correspondingly in said Certified Joint Appendix.

also found that Respondent's determination of deficiencies, making no allowance for offsetting deductions for Black Market purchases, was erroneous. The Sixth Circuit nonetheless held that the burden of proof as to the claimed Black Market deductions was on the taxpayers, which they had failed to carry, and hence sustained Respondent's deficiency determinations as adjusted by the Court. The first question presented is:

Whether the taxpayers, having shown the Respondent's deficiency determinations to be erroneous, had the further burden of proving they owed nothing (through proof of the claimed Black Market deductions), or if liable at all, the correct amount?

2. In the same tax fraud case, customer checks representing the omitted gross sales were endorsed in bearer form by one or the other of said businesses and all were claimed by taxpayers to have thereupon been cashed at the bank with the assistance of its manager, with the cash being used for Black Market purchases not previously claimed as deductions. An analysis of such bank records as were available by the government, however, established that many of these checks were ultimately deposited in "fictitious" savings accounts at said bank and that out of $530,000.00* in net deposits to said accounts, $184,000.00* was traceable back into the hands of the taxpayers. Taxpayers explanation was that the bank manager, unbeknownst to taxpayers at the time, had control of large sums not belonging to the bank (the Tax Court so found in the bank manager's own case), which he used to cash said customer checks, and thereafter

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*Approximate figures

deposited said checks in said fictitious accounts which he had established and controlled. Similarly, taxpayers explained, but the lower courts declined to believe, that the $184,000.00 represented in some instances sums due from the bank manager on business transactions which he chose to satisfy by withdrawals from his fictitious accounts, and in other instances represented what at the time were believed to be routine bank borrowings, but actually were loans made by the bank manager personally by withdrawals of his private funds from said fictitious accounts. Obviously, if the claimed offsetting Black Market purchases were in fact made, then the taxpayers rejected explanations must be accepted, because having received and spent the cash, they could have had no interest in the cashed checks when deposited in the fictitious accounts. Under such circumstances, the second question presented is:

Whether, in imposing the burden on the petitioners of proving the claimed Black Market expense deductions, the Sixth Circuit erroneously relieved the respondent of his burden in a tax fraud case of proving the opposite by clear and convincing evidence, which he made no effort at the trial to carry, and without carrying which, there was no basis other than speculation for concluding that the funds in the fictitious accounts belonged to petitioners?

3. In the same tax fraud case, the Sixth Circuit strongly indicated agreement with taxpayers that the evidence was not clear and convincing upon which the Tax Court found that only $100,000.00 should be allowed taxpayers as a deduction for previously unclaimed Black Market purchases, no part of which had been allowed in the Government's erroneous deficiency determinations. The Sixth Circuit reasoned, however, that the proof of $184,000.00 in withdrawals from the fictitious accounts being traceable into petitioner's hands and thereafter expended for personal purposes, established that some portion of the tax deficiencies asserted was due to fraud,

thereby placing the burden of proof on the taxpayers of setting aside as erroneous the Commissioner's redetermination of taxes as adjusted by the Tax Court. Again, if the full amount of offsetting deductions claimed by the taxpayers was correct, there could be no valid basis for finding that the $184,000.00 belonged to the taxpayers when withdrawn from the fictitious accounts, and hence that the taxpayers were guilty of tax fraud. The third question presented accordingly is:

Whether, when the government's tax deficiency determinations are found to be erroneous by reason of a failure to allow offsetting deductions for Black Market purchases, and there is no clear and convincing evidence upon which to base a finding as to the correct amount of such deductions as being less than the full amount claimed by taxpayers, the government may nonetheless be allowed the benefit of inferences from secondary facts (the $184,000) to place the burden of proof as to primary facts (Black Market deductions) upon the taxpayer, when the validity of the Government's contentions as to said secondary facts is totally dependent upon the correct finding as to the primary facts?

STATUTE INVOLVED

26 U.S.C., Section 7454 provides in part as follows:

> "(a) Fraud.--In any proceeding involving the issue whether the petitioner has been guilty of fraud with intent to evade tax, the burden of proof in respect of such issue shall be upon the Secretary or his delegate".

Similar provisions to this section were contained in Section 1112 of the 1939 Internal Revenue Code.

STATEMENT OF THE CASE

The Petitioners in these three consolidated cases sought review respectively by the Tax Court, and later by the Sixth Circuit, of Income Tax deficiencies and fraud penalties asserted against Petitioners William R. Jackson and Cleveland Chair Company for the years 1942 through 1945, and income tax deficiencies against Petitioners William R. Jackson (hereinafter referred to as "Jackson"), and his wife, Alice J. Jackson, (hereinafter referred to as "Alice") for the years 1948 and 1949. Originally the years 1941-1947 were involved as to Alice, and 1941 and 1946-1947 as to Jackson, but the Tax Court found for Petitioners in those years, after the Government conceded 1941 (1184a, 1230a-1231a, 1246a).

The deficiencies all stemmed from allegedly unreported net income from two furniture manufacturing businesses, the one being Petitioner Cleveland Chair Company, a corporation owned 55%-45% by Jackson and Alice, and the other being Jackson Manufacturing Company, a 55%-45% partnership between Jackson and Alice until its incorporation in 1946 (1187a-1188a, 1221a).

The years other than 1948-1949 were barred by the Statute of Limitations (26 U.S.C., Section 6501(a)) unless fraud could be established (1184a, 1231a). 1948-1949 involved only de minimis amounts (1183a) representing interest on certain "fictitious" bank savings accounts established during World War II which the Government contended Jackson and Alice owned, and which ownership they denied (1222a, 1223a, 1236a, 1246a-1248a). The events decisive of this litigation all occurred in the years 1942-1945 (1190a-1213a).

The Tax Court filed elaborate memorandum findings of fact (1185a-1230a). The Sixth Circuit stated that it had no ground for determining that any of these findings of fact were clearly erroneous and incorporated same in the Sixth

Circuit Opinion by reference (A5, A7). Petitioners did not and do not now question said findings of fact, except to the extent they infer ownership in Petitioners of the funds in the fictitious accounts; limit offsetting Black Market purchases to $100,000.00 (1217a, 1221a, 1222a); find that Jackson did not use diverted funds for purchases of materials (1219a); and attribute omissions of net income to Petitioners (1222a). Petitioners further questioned and do here question the "ultimate facts" as found by the Tax Court insofar as adverse to them (1230a-1231a).

As shown by said Findings of Fact, gross income from sales of the two furniture manufacturing businesses involved was omitted from the pertinent tax returns during certain years in World War II (1194a). The Petitioners contended that the customers' checks in question had been cashed at the East Chattanooga Branch of the Hamilton National Bank of Chattanooga with the assistance of one E. C. Dodd (hereinafter referred to as "Dodd"), the branch manager, and that the resulting cash was used to make purchases on the Black Market and otherwise of raw materials for use in the businesses (1194a, 1216a). It was Petitioner's contention that the omitted sales were completely offset by said purchases, which were also omitted from the tax returns in question; hence, although gross income was freely admitted to have been understated, net income was correctly reported (9a, 45a).

The Government discovered that something was substantially amiss at the East Chattanooga Branch of the Hamilton National Bank of Chattanooga and began an intensive investigation in 1950 (190a-191a, 357a-358a, 368a). The branch manager, the said Dodd, resigned suddenly and "the place was swarming with Internal Revenue Agents" (190a-191a). Dodd was ultimately found by the Tax Court in his own case (See 1237a) to have been guilty of tax fraud for the years 1942-1949 by not reporting a total of approximately $78,500.00 in income he had earned from "a separate operation, a business of making cash loans out of private funds placed at his disposal for that purpose". E.C. Dodd,

T. C. Memo 1962-235, 21 T.C.M. 1261, 1264.

The Tax Court further found that "certain depositors" permitted Dodd to use their funds to make these "side-line" loans "during his normal working hours at the bank without the knowledge or permission of the other bank officials", and that he "used his position at the bank" to accomplish his purposes. The Government's first inkling of the situation came when Dodd was contacted by an agent investigating another taxpayer "to verify a deduction the other taxpayer had taken on his tax return for interest claimed to have been paid on a loan from the bank". Dodd thereupon promptly made a voluntary disclosure of his omitted income. 21 T.C.M. 1261 at 1263.

Proof was offered at the trial by a CPA who had personally borrowed from time to time from what he thought was the branch bank, through Dodd, signing a series of notes payable to the bank. These notes were ultimately determined at the time of the Government's investigation, to be owed in fact to one Lefkoff, whose attorney ultimately collected the notes from the CPA. (670a-676a; Exhibit 64 and 65). Lefkoff, incidentally, also had his problems (criminal tax fraud) as a result of the Government investigation: See 354a-355a; 358a, 378a, and U. S. v. Lefkoff, 113 F. Supp. 551 (E.D. Tenn. 1953).

The Government investigators acknowledged that while Dodd had admitted an arrangement with others (Lefkoff) with respect to "the diverting of sales", he stated to them at the outset that "no such arrangement existed" with Jackson (377a-378a).

The Tax Court found that Jackson, through his businesses, had become the largest depositor at the branch bank; that he had a close and highly informal banking relationship with Dodd (See e.g. 891a-892a); that he had borrowed from time to time from the branch bank through Dodd; and that "Jackson trusted Dodd and accepted advice from him on financial matters"(1220a).

The Tax Court also found that "some time during the years here involved, Jackson turned over to Dodd the handling of his private loans. From time to time Dodd would account to Jackson for collections on these loans" (1220a-1221a; See also 1247a).

Petitioners introduced into evidence a signed acknowledgment from Dodd to Jackson dated in May of 1946 showing he was under a duty to account to Jackson at that time for $31,344.87 (822a-824a; 826a-832a, Exhibit 58, 1144a).

The Tax Court also found that in order to finance the Black Market Purchases, it was with Dodd that arrangements were made by Jackson for an employee of the businesses, W. E. Wooten, to cash customers' checks payable to the businesses, without being deposited to the regular company accounts (1216a; see also 495a-496a and 736a-737a). The Tax Court further found that Wooten would ask Dodd to "hold the cash for a day or two until he called for it" and that Black Market purchases at one time by Wooten "never exceeded $25,000.00" (1216a-1217a).

The government investigation of Petitioners as such began in November of 1951 (368a-369a), some 7 to 9 years after the critical events in question. Suit was filed in the Tax Court in late 1957 (1a, 25a, 39a) and the cases were tried by the Tax Court in 1963 (71a) twenty years after the key year of 1943. In the meantime, virtually all of Petitioners' records for the principal years in question (1942-1945), including accurate records kept of omitted sales and purchases, (495a-498a, 502a, 736a-739a, 947a-948a, 966a, 994a, 1067a-1068a) were destroyed as a result of water damage caused by both fire and flood, under circumstances the innocence of which the government investigators did not question (290a, 359a, 470a, 503a-504a, 609a-614a, 637a, 708a-710a, 789a-794a, 1194a). Such pertinent records as any of the Petitioners had, either business or personal, still available to them (1082a), were fragmentary, being itemized in Exhibit 59 (1145a). There was no proof in the record to suggest any basis for suspicion or criticism for the failure of any of the

Petitioners to have retained and preserved material records.

With the passage of time, Petitioners' original counsel, Albert Taber (882a), became deceased, and later, their original chief counsel of record in the tax court, Joe Roddy, and numerous important witnesses as well (93a, 752a, 812a, 949a, 1046a, 1082a).

The government investigations revealed that a series of savings accounts had been opened in "fictitious" names at the branch bank, which names had relation to Jackson's family or others close to him (1201a). It further traced into these accounts a substantial number of out-of-town checks endorsed by one or the other of the two businesses, although all deposits to these accounts could not be identified (1195a-1201a; 1202a-1210a). Some $530,000.00 in all was deposited to these accounts exclusive of transfers between accounts (1195a-1209a, Exhibit 52, 1129a-1137a). By further analysis of bank records, the government determined that some $184,000.00 of these deposits were traceable back to Jackson for personal use in seven different transactions (1211a-1214a).

Jackson denied any connection from the beginning with the fictitious accounts other than the Thomas Rogers account, a special case (1236a, 534a-535a, 538a-539a, 741a-744a, 998a-1000a), "right down the line, through counsel and on his own behalf before obtaining counsel (378a). Jackson's explanations (843a-913a) for the apparent open and shut case against him resulting from the discovery of the seven transactions were never discussed by the Tax Court or the Sixth Circuit. The Tax Court in a very lengthy opinion devoted only one sentence to disposing of the detailed explanatory proof offered by Petitioners (1234a-1235a):

> "We have not set forth in detail the various explanations which Jackson attempted to give since they are so inconsistent and confused as to be totally unworthy of belief."

Jackson contended that while the $184,000.00 may well have been directly traceable back to him from the fictitious accounts as the government's proof showed, that in all cases the answer was that Dodd, unbeknownst to Jackson, had been using the funds in these accounts which he controlled, and not Jackson, to either loan money to Jackson in what Jackson thought were routine bank borrowings, or in other cases, to account to Jackson for sums due from Dodd on financial transactions Dodd was handling for Jackson (1234a).

While it is recognized that this court's proper function with respect to review of the evidence is very limited after both the Tax Court and the Sixth Circuit have reviewed same, nonetheless, because of its underscoring of the critical relation of the burden of proof question to a proper decision in these cases, the attention of this Court is called to one illustrative instance of the type of explanatory proof the Tax Court so summarily rejected.

The major item in the seven transactions aforesaid was a tracing of the sum of $100,000.00 out of one of the fictitious accounts on April 1, 1944, and into the regular Cleveland Chair Company bank account at the branch bank as a deposit on the same day. This deposit represented a payment by Jackson and Alice for the issuance of additional stock in said company to them (1211a). Jackson testified that this was money he had arranged to borrow through Dodd in a regular banking transaction, which borrowing, or the balance of which, was finally paid off at the time of the liquidation of the partnership Jackson Manufacturing Company at year end 1945 (876a-877a, 882a, 893a). Jackson put in evidence in corroboration a series of five $50,000.00 notes signed by himself (Alice joined in two), all payable to the bank on regular bank note forms, the first of same being dated shortly after the date of the $100,000.00 deposit (875a; Exhibit 48; 1116a). Some of

the notes were stamped "paid" with the bank's stamp (877a, 1116a). The bank official through whom the government succeeded in getting the bank records into evidence testified that the notes appeared to represent routine bank borrowing (266a-227a), yet he could find no sign of them on the bank's appropriate liability ledger sheets (all of which were apparently intact, see Exhibits 5-H through 5-M) where they should have been recorded, and he could not explain this (227a).

Evidence totally independent of Jackson's own testimony, which the Tax Court chose to disbelieve (1247a), and of a weight of at least equal to the bank records the government relied upon, corroborated Jackson to this extent:

The regular partnership account at the bank reflected a deposit of a $100,000.00 bank borrowing on December 31, 1945, by Jackson and Alice (Exhibits XXXand 75; 882a). This borrowing was also reflected on the bank's liability ledger (Exhibit 5-I, 882a-883a). Said partnership was thereupon liquidated (the business continued as a corporation) and very substantial sums were distributed to the two partners which were deposited immediately in their respective regular checking accounts at the bank (883a-884a, Exhibits 4-D and 4-G) The bank ledger sheets for Jackson's regular checking account at the bank, introduced by the government, showed a withdrawal on January 6, 1946, in the sum of $27,500.00 (Exhibit 4-D; 884a). A cancelled check in that amount, drawn on said account, in Dodd's handwriting other than Jackson's signature, dated January 7, 1946, made payable to the bank and apparently cashed by it, was among the fragments of records Jackson still had (Exhibit 50, 1118a; 884a). The bank entry and the check, though dated one

day apart, were obviously related, as no other withdrawal in this amount appears (Exhibit 4-D).

The bank ledger sheets for Alice's regular checking account at the bank introduced by the government (Exhibit 4-G, 885a) also show a withdrawal on January 6, 1946, but in the amount of $22,500.00. Alice's cancelled checks for this period had not been retained (1145a). The two withdrawals aforesaid of January 6, 1946, total $50,000.00 and are in the ratio of 55% to 45% - the same ratio as the respective interests of Jackson and Alice in the partnership (885a, 924a-925a). No record of a payment of $50,000.00, or of $27,500.00, or of $22,500.00, at or about January 6, 1946, or otherwise, appears as a credit on any of the bank's liability ledger sheets introduced into evidence by the government (Exhibits 5-H through 5-M).

Meanwhile the $100,000.00 borrowed December 31, 1945, as aforesaid, was according to the appropriate bank liability ledger sheet reflecting it and introduced by the government (Exhibit 5-I) paid in full on January 28, 1946. The bank records introduced by the government further show that this $100,000.00 was repaid on that date by $47,000.00 in withdrawals from Jackson's and Alice's respective checking accounts (Exhibits 4-D and 4-G) and that the balance of $43,000.00 was additional regular bank borrowing (Exhibit 5-J).

There is thus proof of the strongest sort in the record that at a time when the government contends Petitioners had hundreds of thousands of dollars at their disposal in the fictitious accounts, Petitioners Jackson and Alice are engaging in a regular bank borrowing and repaying of $100,000.00, and above all, are making a payment to the bank of $50,000.00 which the bank's liability ledger records introduced by the government, though apparently complete, (Exhibits 5-H through 5-M) fail to reflect,

either as a payment or a previous liability.

Such proof considered "inconsistent and confused" by the Tax Court (1234a-1235a), but not otherwise discussed by it or the Sixth Circuit, has no apparent basis whatsoever for being disbelieved, and strongly corroborates Jackson's sworn testimony (885a, 893a) that he thought he was borrowing from the bank and repaying it instead of obtaining his own funds from the fictitious accounts. It further strongly corroborates Petitioners' theory that through Dodd's manipulations with his side funds in the fictitious accounts, Petitioners have been caught in a web of circumstantial evidence from which thus far they have been unable to extricate themselves. Petitioners challenge the Respondent, should he file a brief in Opposition to this Petition, to explain the proof of the $50,000.00 repayment aforesaid on a basis consistent with Respondent's theory of the case.

Other aspects of the case also cast grave doubt as to whether justice has in fact been done and further point up the critical nature of the burden of proof question.

The bank records of the branch bank for the period when under Dodd's control, which of necessity formed the cornerstone of the government's proof, were so grossly irregular in many respects and had so obviously been tampered with by Dodd, (see cross-examination of bank official Brown through whom they were ultimately introduced at 190a-247a, 275a-276a) that the the Tax Court most reluctantly admitted them at the trial after finding that they were "questionably substantiated" by only a "scintilla of evidence" as having been kept in the ordinary course of business (280a). Neither the Tax Court nor the Sixth Circuit endeavored to explain how bank records so characterized could be the basis of "clear and convincing" evidence in a tax fraud case.

The government investigating agents acknowledged

that the taxpayers voluntarily and immediately made available to the government retained copies of critical tax returns which the government no longer had (368a, Stipulation at 64a, Paragraphs 1-3; *that taxpayers only retained counsel after the government agents had had discussion with them and were "deep into" the case (370a); that the government made no effort to corroborate their findings with a net worth investigation (381a, 470a); that they made no effort to check whether the resulting percentages of gross and net profits to sales could be deemed possible after the alleged deficiencies in income were added into the operating statements of the two businesses, without the addition of the corresponding deductions claimed (382a); that the only likely source of the omitted income was the two businesses (383a-385a, 465a); that they found no evidence or indication of over ceiling sales as compared to purchases (383a, 469a); that they had made no effort to determine the likelihood of the extraordinarily high profit margins resulting from the government's adjustments, in the light of the squeeze between Petitioners' sales at OPA prices and purchases at Black Market prices (384a, 470a-471a); and that it "would be pure conjecture" to say what part of the omitted gross income would be "net" (386a-387a).

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* The government could not possibly have made out its case without this voluntary act of Petitioners. See Drieborg v. Comm. 225 F. 2d 216 (6th Cir. 1955).

Despite the speculative inferences to be drawn from the apparent relationship between the names given the fictitious accounts and Petitioners (1201a), the Tax Court held that the overall proof in this regard (showing that all deposit slips were in Dodd's handwriting) did not establish that Jackson knew of these accounts as such (1236a-1237a), and the Tax Court accordingly refused to hold Jackson and Alice liable for not including interest income on these accounts in their tax returns in the years barred by the Statute of Limitations (1246a-1248a).

Further, Bank Official Brown testified that bank transit letters upon which the government based its proof as to the omitted checks endorsed by the two companies (Exhibit 5-G, 1201a) would have appeared the same if the companies had cashed the checks at the bank as claimed, and then some person affiliated with the bank (Dodd) had deposited the checks to the credit of his own accounts (243a-244a). He stated that the endorsed checks had become "bearer" instruments and as such they did not require further endorsement (243a-244a, 275a-276a).

Brown also testified that a Government regulation at the time required banks to report substantial deposits of cash, but not of checks (244a-245a), which would supply Dodd with a motive to purchase checks with his own cash and deposit these checks to accounts owned by him. The proof indicated Dodd had a large amount of cash which he needed to convert to a more convenient form for further handling (817a-818a).

Other substantial evidence not dependent upon Jackson's credibility, throwing serious doubt on the government's case and requiring that it be held to the proper burden of proof, was the following:

Unlike the typical tax fraud cases, business income as reported by Petitioners for the years in question was

substantially above industry averages (1219a). In the critical year of 1943, when the most deposits were made to the fictitious accounts, the percentages of net income to sales of the two businesses before taxes were as follows: (1219a):

	Jackson Mfg. Co.	Cleveland Chair Co.
As originally reported	9.57	6.61
As determined by Respondent	27.02	21.33

The industry average for 1943 (Southern Furniture Manufacturers Association) also before taxes, was 6.19 percent (1219a) and as above shown, Petitioners were selling at OPA prices (469a). Perhaps even more incredible is the fact that, based on the Commissioner's own figures for each of these years, Jackson Manufacturing's Net Income Ratio for the year 1943 (the year in which the Commissioner determined the largest deficiency for that company) was more than double its Net Income Radio for the years 1942 and 1945 and almost double that of 1944 (1219a).

Further, Petitioners' proof was that at about the same time Wooten went into the service early in 1944 (1217a), Jackson was able to arrange a line of supply of upholstery material, which became popularly known as "Jackson Velour", which virtually eliminated further need for Black Market transactions (584a-585a, 745a-752a). This would appear self serving until a most peculiar pattern evidences itself upon analysis of the deposits and withdrawals to the fictitious accounts as Petitioners did in their Exhibit 52, consisting of schedules beginning at 1120a. The government agreed with these schedules after minor adjustments not here important (393a-396a).

When the deposits for 1942 through 1949 are analyzed from Exhibit 52 (after the deduction of inter-account transfers, and the ignoring of checks indicated to have been cashed) and then compared with withdrawals, the following results are obtained:

Year	Net Deposits	Withdrawals	Number of Withdrawals
1942	$ 29,223.36	$ -0-	0
1943	423,940.84	79,000.00	5
1944	77,418.43	192,849.96	11
1945	-0-	14,500.00	2
1946	-0-	* 16,489.19	4
1947	-0-	-0-	0
1948	-0-	-0-	0
1949	-0-	36,654.16	8
	**$530,582.63	**$339,493.31	30

* $11,000.00 eliminated (See 395a-396a).

** Net deposits shown exceed withdrawals shown by $191,098.32.

The total net deposits (the original deposit was in June of 1942) as shown by Schedules 4 and 5 of Exhibit 52 through November 24, 1943 were $365,051.35, after the elimination of transfers and ignoring less than $5000 in checks cashed, whereas only a total of $29,000.00 is shown to have been withdrawn through that date, the first withdrawal having occurred on August 12, 1943 (Schedule 8 of Exhibit 52, 1139a).

Obviously if omitted Black Market purchases were being made beginning in 1942, as the Tax Court found (1215a), from the proceeds of cashed company customer checks (491a-493a; 1078a-1079a), but the checks are ending up in the fictitious accounts, with no withdrawals from same until late in 1943, there is circumstantial evidence of the strongest nature to indicate the checks had

been cashed for taxpayers by Dodd with his private funds and thereafter, the checks, now Dodd's in bearer form, were deposited to Dodd's fictitious accounts. Agent Gray assumed the absence of withdrawals meant that omitted Black Market purchases had not occurred as claimed (381a), but the Tax Court did not agree with him, making the $100,000 adjustment aforesaid (1243a).

The Government agents acknowledged that they had wondered about the peculiar pattern shown by the foregoing analysis of the deposits to the fictitious accounts, showing a gradual and comparatively moderate start in 1942, a great expansion in 1943, and then a complete ending of all deposits on January 31, 1944 (390a-392a).*

Thus at a time when net income as reported was at record highs for the two businesses (1224a-1227a) and the motive to cheat should have been continuing unabated, the government's own investigation shows conclusively that all deposits to the fictitious accounts stop as of January 31, 1944, shortly before Wooten went into the Service, and at a time when Jackson testified that the need to buy further on the Black Market virtually ceased. Thereafter the government's analysis of the bank transit letters showed for 1944 approximately $10,000.00 in omitted customer checks cashed and not deposited to the fictitious accounts, and $20,000.00 for 1945. (Exhibit 52, Schedules 6 and 7, 1135a-1137a).

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* The government investigation of bank records began with the year 1949 and worked backwards to 1945 before finding the first discrepancies (293a-294a).

If tighter controls by his accountant caused Jackson to stop his forbidden activities in 1944 as the Tax Court speculates (1237a) and the proof nowhere establishes, or if Jackson was otherwise frightened, why did he hold some of the accounts open until 1949 when the last withdrawals were made as above shown? Why did he not panic when Dodd was transferred from the branch bank in 1946 to a bank at Cedartown, Georgia (870a-871a) and close out the accounts at that time since he would appear to have lost the only insider through whom he had access to the accounts?

The involved side financial transaction (1212a-1213a) Dodd arranged and got Jackson into at the time of the $100,000 stock purchase discussed above (See 857-873a) makes no sense whatsoever other than as a subterfuge concocted by Dodd for his own devious purposes, possibly to keep Jackson unaware of the true source of the funds he was receiving. Why would Jackson try to take concealed funds from the branch bank and "hide" same in his own name in an obscure St. Augustine, Florida bank run by Dodd's brother, and take a deduction on his 1944 income tax return as filed for interest paid this bank, identifying same by name (399a, 867a), when the least inquiry by the government would have led through the St. Augustine Bank records straight back to the branch bank in Chattanooga and potential disaster for Jackson if guilty? After the funds were transferred at Dodd's request from St. Augustine to a bank in Rome, Georgia, along with Dodd's now deceased brother, the proof was uncontradicted that Dodd ultimately got both the principal and the interest (93a, 870a-873a).

If Jackson had anything to hide with respect to the seven specific transactions relied upon by the Commissioner, it is again very strange that a clear lead to the second most important of the seven transactions involved, the

$50,000.00 withdrawal at the time of a farm purchase (1210a-1211a), was to be found in the returns as filed for the years in question. Jackson claimed this transaction involved a $40,000.00 loan from Jackson's father, with the funds having been given to Dodd to handle (847a-855a, Exhibit 51, 1119a, 844a, 848a, 1051a, 360a-361a). The individual income tax returns of Jackson and Alice for both 1944 and 1945 claimed interest deductions listing Jackson's father as the party to whom the interest was paid on this loan (850a). The slightest questioning by the Government of this claimed deduction would obviously have led the agent into a transaction which the Government's theory indicates Jackson could only have wished to keep secret.

Both the Tax Court (1237a) and the Sixth Circuit (A7) commented on the fact that although Dodd was present in the courtroom throughout the trial, neither party elected to call him as a witness.

Finally, and perhaps most important of all to this petition, is the finding by the Tax Court that the deficiencies as determined by Respondent were erroneous, whereupon the Tax Court seized upon an obscure hearsay statement in the record, and it alone, to "rehabilitate" the government's case (A 12), by further finding that after allowing Petitioners an additional $100,000 in deductions for Black Market purchases, the government's determinations should otherwise be sustained (1217a, 1221a-1222a, 1235a, 1239a, 1243a).

At the trial witness W. E. Wooten (then a competitor 602a-603a), who had handled the Black Market purchasing for both businesses prior to his entry into the service in 1944 as aforesaid, testified that he personally pulled and cashed all the omitted checks during that time and every penny was used for purchases of materials (496a-497a, 539a). On cross examination he stated he

did not remember telling Internal Revenue Agents in Johnson City, Tennessee, in May of 1952 that the amount of Black Market purchases was between 75 and 100 thousand dollars, and stated that any estimate he might give would be a "sheer guess" (582a-583a). Agent Gray in rebuttal later testified Wooten had made such a statement to him (1089a-1090a) but acknowledged that it had been made at the moment, without any reflection on Wooten's part and was merely an estimate (1091a). Of course this was hearsay on Gray's part since Gray had no personal knowledge at any time as to the truth or accuracy of the statement.

The Sixth Circuit found in this regard as follows: (A3)

> "The Tax Court here found that only $100,000 of the more than half-million-dollar unreported gross income was applied to black market purchases. Thus this finding left over $400,000 of admittedly unreported gross income unexplained and unaccounted for. It is appellant's main argument that the evidence from which the Tax Court made this finding was not the sort of 'clear and convincing' evidence necessary for a finding of fraud.
>
> "We are not unimpressed with this contention. The Tax Court employed an estimate as to the total of appellant's black market purchases which was made to an Internal Revenue Agent at the first interview of appellant's office manager, W. E. Wooten. Subsequently, at trial this same witness testified strongly for appellant that every dime of the funds he withheld was spent on black market purchases. While Wooten did not deny making the estimate previously referred to, he declined at the time of trial to attempt such an estimate. If the facts referred to up

to this point constituted the sole evidence of fraud, we might not conceive it to be the sort of 'clear and convincing' evidence required to avoid the statute of limitations."

The government obviously tried the cases on the misconception that once it had established omissions of gross income (which the taxpayers never contested) the burden shifted to the taxpayers to prove their claimed offsetting deductions -- otherwise gross income would become net income (468a-469a, 471a). Thus although the government agents freely conceded that their investigation indicated Black Market purchasing had occurred (378a-379a), they allowed no deductions for same whatsoever, reasoning that until the taxpayers proved entitlement to such deductions, the government's determination must stand (468a-469a). Having established that the government's deficiency determinations were wrong, but having no records remaining through no fault of their own to support their sworn contention that all omitted sales were offset completely by omitted purchases, Petitioners have no choice but to rely upon the rules as to burden of proof, and challenge the government to show proper proof anywhere in the record which establishes that any deficiency of net income exists and if so, the correct amount.

REASONS FOR GRANTING THE WRIT

Introductory Statement

This case involves an important area of the law badly in need of further clarification by this Court. It is believed that the subject Sixth Circuit decision is in conflict with the controlling decision of this Court in Helvering v. Taylor, 293 U.S. 507, decided in 1935. The various case citators show that a multitude of United States Court of Appeals decisions and lower court decisions have since 1935 passed upon burden of proof problems in tax cases, where they are uniquely prevalent, commonly citing Helvering v. Taylor as authority for the particular position taken. No subsequent decision of this Court, however, so far as Petitioners have been able to discover, has dealt substantially with the field traversed in Helvering v. Taylor, now 37 years old, and Shepard's United States Citations shows only four decisions of this court which have even cited the case, none of which are here material.

Without further guidance from this Court since 1935 in this busy area of the law, sharp conflicts have crept into the lower court decisions, as will be hereinafter demonstrated, the proper resolution of which is critical to a proper decision in the subject cases. This Court has not hesitated previously to grant certiorari in an income tax case where conflict was shown on the issues involved between the various Courts of Appeals Corn Products Refining Co. v. Comm., 350 U.S. 46 (1955).

Taxpayers were at an extreme disadvantage in these cases due to the innocent and virtually complete loss of their decisive vital records. With the great passage of time involved, it was inevitable that the human memory of those that still survived would not permit complete and

perfect answers in all cases, particularly in the absence of records. As was stated in Delone v. Comm., 100 F. 2d 507, (3rd Cir. 1938):

> "Explanations which would have been expected and might have been called for of a recent transaction, may well be excused after such a lapse of time as existed here. This has a bearing upon the question of actual fraud."

Despite some concern on the part of the Sixth Circuit as to the taxpayers' special difficulties due to the passage of time (A6), it is submitted that both it and the Tax Court declined to show any such consideration to the taxpayers as they might have expected under Delone (supra). It is also well to bear in mind, when considering the three questions presented, the statement of this Court in Burnet v. Houston, 283 U.S. 223 (1931), as follows:

> "The impossibility of proving a material fact upon which the right to relief depends, simply leaves the claimant upon whom the burden rests with an unenforceable claim, a misfortune to be borne by him, as it must be borne in other cases, as the result of a failure of proof."

The confusion as to where the burden of proof lies in a tax case, and particularly a tax fraud case, despite many well established and unquestioned rules, is aptly illustrated by the four-step development of the problem in this case:

(1) The Government tried this fraud case on the theory that once it had shown omissions of gross income, the burden shifted to the taxpayers to prove their deductions and establish correct net income (469a).

(2) The Tax Court agreed with the Government and held

that despite its finding that the Commissioner's determinations were erroneous, "the burden of proof as to the amount of deficiency is on the Petitioners, and Petitioners have totally failed to carry this burden" (1247a).

(3) The Government brief in the Sixth Circuit (an excerpt from which has been certified in the record and appears in Appendix A hereto) acknowledged the error of the Tax Court in this regard (A12). It claimed, however, that the Commissioner's erroneous determination "that there had been no black market purchases" was "rehabilitated" by the proof introduced by the Government, based upon which the Tax Court made the $100,000.00 adjustment, "inasmuch as taxpayer did not then meet his burden of rebutting it" (A12). It was there further stated that a "taxpayer never loses his burden of showing that the Commissioner's determination is wrong" and that "the burden remains on the taxpayer to discredit the Commissioner's extrinsic proof." (A12).

(4) The Sixth Circuit apparently agreed with the Government's said brief, for it held that even though the Commissioner's redetermination had been to an extent overturned by the Tax Court's allowance of an additional $100,000 in Black Market purchases, nonetheless, this fact did not shift "the burden of proof as to total taxes due back to the Commissioner" (A6). Instead, the Sixth Circuit stated that "it seems clear to us, however, that the burden of proving the amount of the claimed Black Market deductions was on the taxpayers" (A6).

It is respectfully submitted that both the Government and the two lower courts have erred in their respective positions at each of the four stages of this case as above described, as will be hereinafter shown.

Question One

It is recognized that once the Commissioner has established by clear and convincing evidence in a fraud case otherwise barred by the Statute of Limitations, that at least part of an asserted deficiency is due to fraud, the taxpayer then has the burden, as in a non-fraud case, of going forward with the necessary proof to show that the Commissioner's deficiency determination is erroneous and thereby overcoming the presumptive correctness of same. Bryan v. Comm., 209 F. 2d 823, (5th Cir. 1954), Kreps v. Comm. 351 F. 2d 1 (2d Cir. 1965).

In Helvering v. Taylor, 293 U.S. 507, (1935), aforesaid, this Court bound the Sixth Circuit and all other lower courts with the following words:

> "We find nothing in the statues, the rules of the board or our decisions that gives any support to the idea that the commissioner's determination shown to be without rational foundation and excessive will be enforced unless the taxpayer proves he owes nothing or, if liable at all, shows the correct amount. While decisions of the lower courts may not be harmonious, our attention has not been called to any that persuasively supports the rule for which the commissioner here contends.
>
> "Unquestionably the burden of proof is on the taxpayer to show that the commissioner's determination is invalid. Lucas v. Structural Steel Co., 281 U.S. 264, 271, Wickwire v. Reinecke, 275 U.S. 101, 105, Welch v. Helvering, 290 U.S. 111, 115. Frequently, if not generally, evidence adequate to overthrow

> the commissioner's finding is also sufficient to show the correct amount, if any, that is due. See, e.g., Darcy v. Commissioner, 66 F. (2d) 581, 585. But, where as in this case the taxpayer's evidence shows the commissioner's determination to be arbitrary and excessive it may not reasonably be held that he is bound to pay a tax that confessedly he does not owe unless his evidence was sufficient also to establish the correct amount that lawfully might be charged against him.

Thus, a taxpayer, having shown the Commissioner's deficiency determination to be invalid has no further burden to go forward and show, in addition, that he owed no tax, or the correct amounts to be charged against him. Helvering v. Taylor, (supra); Grubb v. Comm., 315 F. 2d 753, (6th Cir. 1963); Welch v. Comm., 297 F. 2d 309 (4th Cir. 1961). It then becomes "the Commissioner's burden to prove that the determination was correct in spite of the errors shown" Thomas v. Comm., 266 F.2d 297 (6th Cir., 1959).

> "In short, the Commissioner's determination is presumed correct, but if error is shown, the presumption disappears and the Commissioner then has the burden of proving the correctness of his determination, or at least the correct amount actually due. A presumption is but a heavier burden of proof, but once overcome the burden of going forward shifts with the introduction of the proofs." Harp v. Comm., 263 F. 2d 139 (6th Cir. 1959). (Emphasis Supplied)

It is submitted that the Sixth Circuit decision in the instant case on this phase of the problem is not only in con-

flict with its own decision in Harp v. Comm., (supra), but also with that of the Fourth Circuit in Welch v. Comm., 297 F. 2d 309 (4th Cir. 1961) (supra), where the Court stated:

> "the Commissioner's rejection of these deductions in toto was plainly wrong. In short, the presumption of correctness to which the determination of the Commissioner is ordinarily entitled was destroyed by its own inherent defect. Under these circumstances the burden of proof did not rest upon the taxpayer, and the Tax Court was not justified in basing its decision upon the failure of the taxpayer to show the precise amount of the deductions to which he was entitled."

Taxpayer's proof was, in the above quoted language of Helvering v. Taylor "adequate to overthrow the Commissioner's finding" (both lower courts so held), but unlike some cases was not "sufficient to show the correct amount, if any, that is due", unless the sworn claim that all omitted sales were offset by omitted purchases be accepted. The Government's brief in the Sixth Circuit recognized by implication that if the Sixth Circuit rejected the $100,000.00 adjustment, then despite proof of fraud, the ultimate decision must be for the taxpayers. (A12).

This is in accord with the Tax Court's summary of the "line of cases headed by Helvering v. Taylor," that once the determination of the Commissioner is deemed arbitrary and excessive, "there is no burden on the taxpayer to show the correct amount of tax, and if neither party can show the correct amount, then there can be no deficiency." (Emphasis Supplied). J. D. Farber, 43 TC

407, Dec. 27, 201. It is also worth noting that here the error affected the entire deficiency, rather than a separate part of it, as in Hoffman v. Comm., 298 F. 2d 784, (3rd Cir. 1962). Hence no part of the presumption of correctness can remain.

It is apparent that the Sixth Circuit regarded with substantial disapproval the Tax Court's hearsay evidence basis for the arbitrary $100,000.00 adjustment it made (A3). This Court commented in a similar situation in Consolidated Edison Co. v. NLRB, 305 U.S. 197, 230 (1938), that "Mere uncorroborated hearsay or rumor does not constitute substantial evidence" to support a finding made even by an administrative tribunal.

It is accordingly submitted that there is no proper basis upon which the proposed "rehabilitating" (A12) adjustment by the Tax Court can be upheld. It is thus taxpayers' further contention that they have brought themselves squarely within the rule of Helvering v. Taylor in that they have destroyed the presumptive correctness of the Commissioner's deficiency determination, and the Commissioner has failed to introduce any competent proof to carry his resulting burden of showing the correct amount due.

If it were assumed, however, that there was a proper basis for the $100,000 adjustment or any other adjustment in the evidence, the Government's Sixth Circuit brief argues as follows (A12):

> "The point that taxpayer misses is that a taxpayer never loses his burden of showing that the Commissioner's determination is wrong, and that if the Commissioner can support his deficiency determination even without the aid of the presumption of correctness the burden

remains on the taxpayer to discredit the Commissioner's extrinsic proof. United Aniline Co. v. Commissioner, 316 F.2d 701, 704 (C.A. 1st). Taxpayer here clearly failed to do this."

The United Analine decision, cited by the Government, was decided in 1963. It recognized and pointed out the differences of opinion between the various Courts of Appeals in this problem area in the following words:

"...this argument involves a serious misconception on taxpayers' part. We agree with them that the Commissioner's determination of amounts is not 'evidence.' But we cannot agree with those courts which appear to say that it merely shifts onto the taxpayer the 'burden of going forward with evidence,' see, e.g., Stout v. Commissioner, 4 Cir., 1959, 273 F. 2d 345, 350, or that it creates a presumption which 'disappears' in the face of positive evidence. Stout v. Commissioner, supra; Gersten v. Commissioner, 9 Cir., 1959, 267 F. 2d 195, 199. While it may not be uncommon to use the word 'presumption,' it must be done only when it is made clear that the taxpayer never loses the burden of proving the Commissioner's determination erroneous. See Sharaf v. Commissioner, 1 Cir., 1955, 224 F. 2d 570, 572. The danger of speaking of presumptions in isolation is that it may lead to the error illustrated in Clark v. Commissioner, 9 Cir., 1959, 266 F. 2d 698, of concluding that if taxpayer introduces evidence from which it

'could' be found that the Commissioner's determination was erroneous the 'disappearance' of the presumption places the burden of proof on the Commissioner. Id. at 706."

United Aniline also conflicts with the Eighth Circuit in Cullers v. Comm., 237 F. 2d. 611, (8th Cir. 1956) which held that the presumption "vanishes" in the face of substantial evidence to the contrary. The First Circuit opinion is also to be sharply contrasted (along with the Government's above quoted position that "a taxpayer never loses his burden of showing that the Commissioner's determination is wrong") with the opinion of the Fifth Circuit in Cohen v. Comm., 266 F. 2d 265, (5th Cir. 1959) where it stated the following:

"Respondent argues that the taxpayer did not meet his burden of showing that the Commissioner's determination, 'as redetermined by the Tax Court,' was arbitrary or invalid. The question, however, is not whether this determination was invalid after the Tax Court had reduced it by eighty-five per cent. The pertinent inquiry is whether it was invalid as originally computed by the Commissioner. See Helvering v. Taylor, supra, p. 515. Respondent has not here claimed that the Commissioner's original determination was valid.

"Cohen, having met his burden of proving the Commissioner's determination invalid, and thus taking the presumption of the correctness of that determination out of the case, was not chargeable with failure to make a further showing. Hence it was improper for the Tax Court in making its redetermination to accept its maximum

possible gross income figure as the actual figure only because Cohen failed to show a lesser amount." (Emphasis Supplied)

See also MacCrowe's Estate v. Comm., 252 F. 2d 293, (4th Cir. 1958), which held that once the Tax Court rejected the Respondent's deficiency determination and redetermined same, the presumption as to the correctness of such determination was out of the case.

The subsidiary issue involved, should this Court somehow uphold the $100,000.00 adjustment, is thus whether the burden stayed with the Commissioner once his basic determination is shown to be erroneous, even after "rehabilitating" proof was offered, or whether thereafter the burden again shifted back to the taxpayer who had already carried the day as to the original deficiency determination. As shown above, a square conflict of substantial proportions exists between the Courts of Appeals on this question, and the Sixth Circuit in the instant case has aligned itself with those courts who favor the Government rather than the taxpayer.

An obvious appeal can be made to "fundamental notions of fair play" in support of those decisions favoring the taxpayer on this point, as being essential to our overall scheme of voluntary taxation in this country. It is accordingly respectfully submitted that the answer to Question One should, in accordance with the principles announced in Helvering v. Taylor, be in the negative and the Sixth Circuit should be reversed on this point.

Question Two

The previous question assumed that the requisite proof of fraud had been established (which Petitioners deny) thereby overcoming the Statute of Limitations. This question and the Third Question raise issues as to the burden of proving or

disproving the claimed offsetting deduction, in the context of the Government's statutory burden of proof in a fraud case (26 U.S.C., Section 7454(a), supra), which the Courts have uniformly held means proof by "clear and convincing evidence". Kreps v. Comm. 351 F. 2d 1 (2d Cir. 1965).

Here again there is a sharp conflict in the decisions in the lower courts.

The Sixth Circuit recognized that the respondent had the burden of not only showing apparently fraudulent conduct, but also of showing in addition that "some portion of the tax deficiency is due to fraud" (Emphasis Supplied) (A5). See also Cirillo v. Comm., 314 F. 2d 478 (3rd Cir. 1963) where the Court stated that "a fraud penalty can be imposed only where proof of a deficiency is supplemented by proof that the 'deficiency is due to fraud with intent to evade tax'."

Unless therefore, Respondent can establish that some net income, as compared to gross income, has been omitted, he will not have established a "tax deficiency" and will not have carried the second part of the two-part burden imposed upon him in a fraud case prerequisite to overcoming the Statute of Limitations. Until this has occurred, there is no presumption in favor of the Commissioner's deficiency determination if otherwise barred by the Statute of Limitations. Drieborg, et al v. Comm., 225 F. 2d 184, (6th Cir. 1955); George v. Comm., 388 F. 2d 221 (1st Cir. 1964).

The Sixth Circuit decision in the instant case (A6) erroneously relieved the Commissioner of its burden in a fraud case of first proving that a tax deficiency had in fact occurred and instead placed upon the taxpayers the burden of proving the opposite before a presumption had arisen in favor of the Respondent's deficiency determination.

The following decisions are in conflict with the Sixth Circuit on this issue:

(1) Richardson v. Comm., 264 F. 2d 400 (4th Cir. 1959)

wherein the Court made the following statement:

> "We cannot agree that the finding of an understatement of gross receipts automatically puts on the taxpayers the obligation to prove the offsetting deductions in order to escape a fraud penalty. Such a contention might have more force in a case where the unreported income and deductions were unrelated or only remotely related.
>
> ***
>
> "In order for a fraud penalty to be assessed where the unreported items of income and expense are closely related, the Commissioner must prove that at least some unreported net income resulted from the unrecorded transactions.

(2) Ries v. U. S., 172 F. Supp. 929 (E.D. Pa. 1959) wherein the Court stated:

> "The Government has not established by the quantum of proof required in a fraud case that the case purchases claimed to have been made by the taxpayers were fictitious. There is therefore no evidence sufficient to shift the burden of going forward to the taxpayers. The Government cannot use the taxpayers' failure to prove that the payments were in fact made when the Government has introduced no evidence sufficient to sustain the burden which it carried to establish the contrary. To hold otherwise would be to relieve the Government of the burden of proving fraud and to require the taxpayers to sustain the burden of disproving it."

(3) Lloyd J. Lowe, T.C.Memo. 1955-150, 14 T.C.M. 547,

wherein the Tax Court stated:

> "Here, however, respondent has employed the bank deposits method which, in the case of a taxpayer in a trade or business, is more indicative of gross receipts than it is of net income. Where respondent resorts to the latter method, in order to affirmatively prove fraud he must also prove that the taxpayer's allowable deductions do not exceed an amount which, when deducted from gross income, leaves a substantial amount of unreported net income."

In addition to the foregoing three cases, it appears that one of the Sixth Circuit's own decisions conflicts with its decision in the present case. See Grubb v. Comm., 315 F. 2d 753 (6th Cir. 1963, supra) where it was held that the Tax Court erred in holding that the burden was on the taxpayer to establish what amounts of cash he had on hand at the end of the various years in question, after the Tax Court had found that the Commissioner was mistaken in his computations as to Petitioner's cash on hand.

Masters v. Comm., 243 F. 2d 335 (3d Cir., 1957), and Clark v. Comm., 226 F. 2d 698 (9th Cir. 1959), appear to be in conflict with the Richardson decision (supra) in that they required the Commissioner to prove only that sales were understated. Jack M. Chesbro, 21 T.C. 123 (1953) aff'd per curiam, 225 F. 2d 674 (2d Cir. 1955) apparently agreed with Richardson v. Comm., supra, since that decision turned in large part upon the fact that the Commissioner had proved not only that sales were understated, but also that "the purchases were not understated in amounts at all comparable thereto", which latter fact the Respondent did not even bother to undertake to

prove in the instant case (468a-469a, 471a). This was undoubtedly due to the Government's fundamental misconception at the outset that its only obligation was to establish omissions of gross income (which the taxpayers at all times freely admitted), whereupon it could rest its case and enjoy the spectacle of the taxpayers attempting to do the impossible of corroborating their sworn testimony, in the absence of the precise records they once had.

There is thus a square conflict of opinion in the lower courts as to whether in a fraud case, the Commissioner, having established omissions of gross income, must also do the necessary to prove that some net income resulted, before the necessary finding can be made that fraud with intent to evade tax existed, removing the bar of the Statute of Limitations.

Until a proper decision has been reached, correctly determining the amount of offsetting Black Market purchase deductions to which Petitioners are entitled, then as will be hereinafter argued in Question Three, it is improper to nonetheless conclude that the $184,000.00 in the fictitious accounts traceable, or apparently traceable to the Petitioners were in fact their own funds, as compared to belonging to or otherwise being controlled by Dodd. In the present state of the record, with the strong explanatory proof offered by Petitioners, it was sheer speculation for the lower courts to resolve all doubt against Petitioners, particularly when a proper resolution of this deduction question had yet to occur.

> "Where unimpeached, competent, and relevant testimony on behalf of a taxpayer is uncontradicted, it may not be arbitrarily discredited and disregarded, and the Tax Court cannot reject or ignore this evidence." Tank v. Comm., 270 F. 2d 477 (6th Cir. 1959).

It is thus apparent that should this Court resolve the existing conflict in the lower court decisions above cited by overruling the Sixth Circuit opinion in this case, and following the line of cases headed by Richardson v. Comm., (supra), then (a) the admission by the Government that they recognized that Black Market purchases had occurred. (378a-379a), plus (b) the Tax Court's finding that the Commission's determination that there had been no Black Market purchases was unjustified (A12), coupled with (c) a complete failure of the Government to establish by proper proof as compared to suspicion that any net income was omitted, must result in a decision in favor of the taxpayers. The necessary tax deficiency will not have been established, without which one of the essential elements of a fraud determination, necessary to remove the bar of the Statute of Limitations, will not have been proved.

Taxpayers accordingly contend that the answer to Question Two should be in the affirmative.

Question Three

This question raises the fundamental issue, related to the issue in the previous case, of whether the Sixth Circuit Opinion which this Court is being requested to review, erroneously relieved the Respondent of a part of his overall burden of proof essential to establishing fraud with intent to evade tax, and correspondingly shifted to Petitioners a burden of disproving which the law does not impose upon them.

The Sixth Circuit, while apparently rejecting as being unsupported by proper evidence the Tax Court's windfall "rehabilitation" of the Government's defective case through the $100,000.00 adjustment, instead chose in turn to "rehabilitate" the Government's case by viewing the seven specific transactions adversely to the taxpayers and finding that this proof was sufficient to overturn the Statute of Limita-

tions, and to impose on taxpayers a burden of proving any additional deductions over those allowed them by the Tax Court. As Petitioners analyze the Tax Court Opinion, the Tax Court apparently reasoned that the seven specific transactions established fraudulent intent, but in and of themselves were insufficient to establish a specific tax deficiency, or in other words, specific omissions of net income as compared to gross income. Both the Tax Court and the Sixth Circuit, viewing as they did the seven specific transactions as being fraudulent, thereupon shifted the burden of establishing deductions (and hence net income) to the taxpayers.

It is thus apparent that if, under proper rules of sequence in burden of proof, the seven specific transactions may not be relied upon until there first has been a resolution favorable to the Government of an essential preliminary question, and this preliminary question cannot be resolved favorably to the Government, then the circumstantial evidence indicating fraud on the part of the taxpayers inherent in the seven specific transactions (even if taxpayers cogent explanations are to no avail) cannot be relied upon by the Government.

The Government had the basic burden of establishing fraud. It chose to rely entirely on circumstantial evidence based on grossly irregular (190a-247a) bank records "questionably substantiated" by only a "scintilla of evidence" as being admissable (280a). Neither lower court would comment upon the basic propriety of holding the taxpayers liable on a case built on this unclear and unconvicing quicksand. These records had been under the personal control of Dodd as branch bank manager during the critical years in question and were in such shape that Bank Official Brown, through whom they were introduced, would not attempt to testify which if any were true bank records and which were Dodd's private records kept on

bank forms (239a). He further agreed there were grounds for viewing the bank records with a "great deal of suspicion" (241a). Under these circumstances, the Government, despite having the basic burden of proof, still relied on its circumstantial evidence and chose not to call Dodd to the stand, though he was available at all times in the Courtroom (1237a, A7). Not a single witness on either side testified of their own knowledge that any of the Petitioners were linked to the fictitious accounts, nor were there any signatures, deposit slips, or other handwriting evidence creating such a link. Under the circumstances, the Government's reliance solely upon circumstantial evidence and its declining to put witness Dodd on the stand (whose position had already been indicated in the record as favorable to taxpayers (377a), must be resolved most strongly against the Government, which had the burden of proof.

The decisions of the Tax Court and the Sixth Circuit in this case placed the cart ahead of the horse. They permitted the Government to rely upon circumstantial evidence of suspicious facts to transfer the burden of proof to the taxpayers of proving their deductions, instead of imposing upon the Government the initial burden of disproving the claimed deductions, and thereby establishing a specific tax deficiency, which the Government made no effort to accomplish by proper proof. If the taxpayers' sworn testimony claiming a complete offset be discounted by that solemn process whereby one human being vested with judicial power is permitted in our legal system to intuitively state that another human being's testimony is not worthy of belief (and thereby avoiding coming to grips with the merits of the testimony), nonetheless, a vacuum still exists both ways on the offsetting deduction question. The result is that as a matter of law, the party who had the burden of proof fails and the other party prevails. Burnet v. Houston, 283 U.S. 223 (1931) (supra).

"Since the burden was on the Commissioner to prove fraud, it must follow that he had the burden of proving every subsidiary fact relied upon by the court to support that ultimate conclusion. To permit, in satisfying this burden, the use of a Commissioner's finding that was to be accepted only because the taxpayer had failed to meet a burden of overcoming it, would be to allow the Commissioner to raise himself by his own bootstraps."
George v. Comm., 388 F. 2d 221, (1st Cir. 1964).

"Although the existence of fraud may be gathered from circumstances, the piling of inference upon inference hardly qualifies as the clear and convincing evidence by which fraud must be proved." Goldberg v. Comm., 239 F. 2d 316 (5th Cir. 1956).

"The Commissioner's heavy burden of proof on the issue of fraud cannot be satisfied by mere disbelief of taxpayer's testimony. The record must contain some convincing affirmative indication of the required specific intent."
Cirillo v. Comm., 314 F. 2d 478, (3rd Cir. 1963).

The Sixth Circuit in the instant case in its Opinion recognized the problem involved when it stated (A6):

"And, of course, the fact that the Commissioner erroneously failed to allow this $100,000 item did not mean that other determinations not dependent thereon were deprived of the presumption of correctness." (Emphasis Supplied).

It is taxpayers' position that the Commissioner's determination of fraud as based upon the seven specific transactions was dependent upon the Commissioner first carrying his burden of proof of disproving the claimed offsetting deductions which he failed to do. As a matter of cold logic, the Tax Court and the Sixth Circuit have permitted "the Commissioner to raise himself by his own bootstraps" George v. Comm. (supra).

It is again respectfully insisted that the lower courts both erred as specified and that the answer to Question Three should accordingly be in the negative.

CONCLUSION

For the foregoing reasons, this petition for a writ of Certiorari should be granted.

Respectfully submitted,

RICHARD P. JAHN
Tanner & Jahn, Attorneys
12th Floor Volunteer Building
Chattanooga, Tennessee

Counsel for Petitioners

October 9, 1967

JUL 14 1967
CARL W. REUSS, Clerk

Nos. 17023 - 17025

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

WILLIAM R. JACKSON,
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

WILLIAM R. and ALICE J. JACKSON,
Petitioners.

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CLEVELAND CHAIR COMPANY,
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITIONS for Review of the Decisions of the Tax Court of the United States.

Decided July 14, 1967.

Before: WEICK, Chief Judge, EDWARDS, Circuit Judge, and CECIL, Senior Circuit Judge.

EDWARDS, Circuit Judge. These cases are appealed from decisions by the United States Tax Court. With some important modifications, the Tax Court upheld the Commissioner of Internal Revenue's redeterminations of income and corpora-

tion surplus profits taxes concerning the individual and corporate petitioners. The net effect of the Tax Court decisions is to assess taxes, fraud penalties and interest totaling approximately $1,400,000.

The cases all arose out of profits engendered by two furniture manufacturing concerns owned by petitioners William R. and Alice J. Jackson during World War II. The substantial items at issue are income tax deficiencies, fraud penalties and interest assessed against taxpayers William R. Jackson and Cleveland Chair Company for the years 1942 through 1945. The Tax Court disallowed similar deficiencies and penalties against Alice J. Jackson on the ground that knowledge of the fraudulent transactions as to her had not been proved by clear and convincing evidence. Int. Rev. Code of 1954, § 6501(c)(1), § 7454(a); *Hawkins* v. *Commissioner of Internal Revenue*, 234 F.2d 359 (C.A. 6, 1956); *Drieborg* v. *Commissioner of Internal Revenue*, 225 F.2d 216 (C.A. 6, 1955).

The main thrust of these appeals is that fraud was not established as to the World War II years referred to, and hence these cases filed in 1951 were barred by the statute of limitations. Int. Rev. Code of 1939 §§ 275(a) and 276(a) (now Int. Rev. Code of 1954 § 6501(a) and § 6501(c)).

The taxpayer appellants admit that the gross sales of the two furniture concerns were understated on the books and income tax returns in the relevant years by $309,533.56 in the instance of Jackson Manufacturing Company (a sole proprietorship owned by Jackson), and by $255,844.84 in the instance of Cleveland Chair Company (a company whose stock was wholly-owned by Mr. and Mrs. Jackson). The appellants contend, however, that this entire sum was spent on materials purchased for the two manufacturing concerns at prices higher than those permitted by the Office of Price Administration. Their claim is that the black market purchases entirely offset the gross sales understatement, and hence, there was no understatement of net income or underpayment of taxes, and, therefore, no fraud. Cf. *Commissioner of Internal Revenue* v. *Johnson*, 276 F.2d 110 (C.A. 7, 1960).

It is, of course, settled that black market expenditures for materials employed in the production of goods for sale, even though clearly illegal, may be regarded for income tax purposes as deductions against net income. *Commissioner of Internal Revenue* v. *Guminski*, 198 F.2d 265 (C.A. 5, 1952); *Jones* v. *Herber*, 198 F.2d 544 (C.A. 10, 1952); *Commissioner of Internal Revenue* v. *Weisman*, 197 F.2d 221 (C.A. 1, 1952); 3A Mertens, Law of Federal Income Taxation, § 21.206 (Zimet & Weiss rev. 1958).

The Tax Court here found that only $100,000 of the more than half-million-dollar unreported gross income was applied to black market purchases. Thus this finding left over $400,000 of admittedly unreported gross income unexplained and unaccounted for. It is appellant's main argument that the evidence from which the Tax Court made this finding was not the sort of "clear and convincing" evidence necessary for a finding of fraud.

We are not unimpressed with this contention. The Tax Court employed an estimate as to the total of appellant's black market purchases which was made to an Internal Revenue Agent at the first interview of appellant's office manager, W. E. Wooten. Subsequently, at trial this same witness testified strongly for appellant that every dime of the funds he withheld was spent on black market purchases. While Wooten did not deny making the estimate previously referred to, he declined at the time of trial to attempt such an estimate. If the facts referred to up to this point constituted the sole evidence of fraud, we might not conceive it to be the sort of "clear and convincing" evidence required to avoid the statute of limitations. Int. Rev. Code of 1954 § 6501(c)(1), § 7454(a); *Hawkins* v. *Commissioner of Internal Revenue, supra; Drieborg* v. *Commisisoner of Internal Revenue, supra, Bryan* v. *Commissioner of Internal Revenue*, 209 F.2d 822 (C.A. 5, 1954), *cert. denied*, 348 U.S. 912 (1955).

Jackson and his office manager both testified. They were unable to produce any records for the black market sales and they both betrayed a decidedly vague memory as to the

persons, concerns and amounts involved in the over half-million-dollar black market business which Jackson asserts he engaged in.

The decisive testimony on the issue of fraud in this case, however, consists of wholly different evidence. The government proved by bank records, company checks, bank letters and testimony of bank officials, the existence during the years in question of numerous fictitious name savings accounts in the bank employed by taxpayers. Most of the names employed were variations of family names of members of Jackson's family. This evidence we believe was both admissible and highly relevant. (28 U.S.C. § 1732.)

The amounts deposited in the fictitious name accounts totaled over half a million dollars during the period 1942 to 1945. Although Jackson denied knowledge of the existence of all except one of the accounts, government proofs established that all of the deposits in these accounts which could be identified (other than interest credits), were deposits of checks of customers of the Jackson Manufacturing Company and the Cleveland Chair Company. These checks had been endorsed by these two companies for deposit. Identifiable deposits of checks in these accounts in payment of Jackson or Cleveland sales invoices totaled over $400,000 for the years in question. There were numerous other such checks which had been similarly endorsed and cashed.

Further, the Tax Court found that $184,298.13 worth of withdrawals from these fictitious name accounts were made coincident as to time and amount with deposits to William R. Jackson's personal accounts (or to accounts for the benefit of Jackson or Mr. and Mrs. Jackson).

Jackson denied personal knowledge of most if not all of these complex banking arrangements. He testified that he gave one Dodd, the manager of the bank where these fictitious accounts were kept, very great authority in handling his funds. But as we read this record, the Tax Court had every reason to consider Jackson's denials much more an assertion of lack

of detailed memory of the form of the transactions than proof of ignorance of their substance.

Jackson admitted personal and close supervision of his two businesses. While he testified that Wooten had suggested the mechanics of pulling invoice copies and customer checks out of the company records in order to produce unrecorded cash, and while he and Wooten both testified that Wooten had authority to cash company checks and pay for black market purchases, it is, we believe, very significant that the "pulled" invoices were kept in the righthand bottom drawer of Jackson's desk. These were the crucial documents for control of this whole conspiracy.

The findings of fact of the Judge of the Tax Court spell out the evidence of fraud in great detail. We have no ground for determining that any of them are "clearly erroneous," (see *Commisisoner of Internal Revenue* v. *Duberstein*, 363 U.S. 278 (1960)) and we incorporate them herein by reference.

For avoidance of the statute of limitations, the Commissioner need only prove that some portion of the tax deficiency is due to fraud. Int. Rev. Code of 1939 §§ 293(b) and 276(a) (now Int. Rev. Code of 1954 §§ 6653(b) and 6501(c)(1)). *Toledano* v. *Commisisoner of Internal Revenue*, 362 F.2d 243, 247 (C.A. 5, 1966); *Kreps* v. *Commissioner of Internal Revenue*, 351 F.2d 1, 6 (C.A. 2, 1965); *George* v. *Commissioner of Internal Revenue*, 338 F.2d 221, 223 (C.A. 1, 1964).

We believe the proofs recited and those incorporated by reference establish by clear and convicing evidence that the taxpayers fraudulently withheld substantial tax sums with intent to evade taxes in each of the years 1942 through 1945.

As we have noted, the burden of proving fraud to avoid the statute of limitations must be borne by the Commissioner by clear and convincing evidence. But once fraud is established as to a particular tax return in a particular year (otherwise barred by limitations), the burden of proof for setting aside the redetermination of taxes by the Commissioner is on the taxpayer. *Welch* v. *Helvering*, 290 U.S. 111, 115 (1933); *Helvering* v. *Taylor*, 293 U.S. 507, 515 (1935).

The taxpayers, however, vigorously assert that since the Tax Court allowed $100,000 of black market purchases as a deduction against gross income, and to that extent overturned the Commissioner's redetermination, this fact shifted the burden of proof of total taxes due back to the Commissioner. It seems clear to us, however, that the burden of proving the amount of the claimed black market deductions was on the taxpayers. *Burnet* v. *Houston*, 283 U.S. 223, 227 (1931); *Reinecke* v. *Spalding*, 280 U.S. 227, 233 (1930); *Bryan* v. *Commissioner of Internal Revenue, supra.* The effect of the Tax Court holding is that the burden of proof of those deductions was carried only to the extent of $100,000. We recognize, of course, that it was a government witness who quoted the estimate which the Tax Court ultimately employed. But the net effect of appellant's proofs was that there were black market purchases which offset the admitted understatement of gross income. If the proofs establishing the $100,000 deduction allowed by the Tax Court as an offset to the gross income be less than definitive, we still cannot hold from this record that it is "clearly erroneous." *Harris* v. *Commissioner of Internal Revenue*, 174 F.2d 70, 72-73 (C.A. 4, 1949). Indeed, if there be error in the estimate, it appears to this court that the taxpayer got the benefit thereof. And, of course, the fact that the Commissioner erroneously failed to allow this $100,000 item did not mean that other determinations not dependent thereon were deprived of the presumption of correctness. *Hoffman* v. *Commissioner of Internal Revenue*, 298 F.2d 784, 788 (C.A. 3, 1962); *George* v. *Commisisoner of Internal Revenue, supra.*

At the oral hearing of this case, this court was particularly concerned about the lengthy delay in the filing and processing of these tax cases. Testimony of witnesses in this trial, however, allows the inference that these cases grew out of Internal Revenue investigations of the tax returns of Dodd, the bank manager previously referred to. In *E. C. Dodd*, T.C. Memo 1962-235 (Oct. 5, 1962), the Tax Court held Dodd's

federal income tax returns for the years 1942 to 1949 to have been fraudulent, with intent to evade taxes.[1] The record clearly establishes that the taxpayers gave no hint of the false accounting practices and made no claim as to black market purchase offsets until the initiation of this investigation in 1951. Subsequent delays apparently were frequently the result of taxpayers' requests.

The Tax Court Judge wrote a careful and detailed opinion which we have reviewed. It covers added details and issues as to which we see no need for repetition.

The opinion and the judgment of the Tax Court are affirmed.

---

[1] Against this background, neither party elected to call Dodd to testify, although the Tax Court Judge noted that Dodd was present in the Courtroom all during the trial of the instant case.

A8 W. R. Jackson v. C.I.R. No. 17,023

UNITED STATES COURT OF APPEALS
For the Sixth Circuit

W. R. JACKSON,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

BEFORE: WEICK, Chief Judge, EDWARDS, Circuit Judge, and CECIL, Senior Circuit Judge.

On Petition to Review a decision of the Tax Court of the United States.

This cause came on to be heard on the transcript of record from the Tax Court of the United States, and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this court that the decision of the said Tax Court in this cause be and the same is hereby affirmed.

No costs awarded. Rule 23(4).

Entered by order of the Court

/s/ Carl W. Reuss
Clerk

No. 17,024 William R. and Alice J. Jackson v. C.I.R.

A9

UNITED STATES COURT OF APPEALS
For the Sixth Circuit

WILLIAM R. AND ALICE J. JACKSON,

Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

BEFORE: WEICK, Chief Judge, EDWARDS, Circuit Judge, and CECIL, Senior Circuit Judge.

On Petition to Review a decision of the Tax Court of the United States.

This cause came on to be heard on the transcript of record from the Tax Court of the United States, and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this court that the decision of the said Tax Court in this cause be and the same is hereby affirmed.

No costs awarded. Rule 23(4).

Entered by order of the Court

/s/ Carl W. Reuss
Clerk

A10 Cleveland Chair Company v. C.I.R. No. 17,025

UNITED STATES COURT OF APPEALS
For the Sixth Circuit

CLEVELAND CHAIR COMPANY,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

BEFORE: WEICK, Chief Judge, EDWARDS, Circuit Judge, and CECIL, Senior Circuit Judge.

On Petition to Review a decision of the Tax Court of the United States.

This cause came on to be heard on the transcript of record from the Tax Court of the United States, and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this court that the decision of the said Tax Court in this cause be and the same is hereby affirmed.

No costs awarded. Rule 23(4).

Entered by order of the Court

/s/ Carl W. Reuss
Clerk

No. 17,023-17,025

Excerpts from Brief for the Respondent

UNITED STATES COURT OF APPEALS
For the Sixth Circuit

WILLIAM R. JACKSON, Petitioner v. C. I. R., Respondent

WILLIAM R. and ALICE J. JACKSON, Petitioners v. C. I. R., Respondent

CLEVELAND CHAIR COMPANY, Petitioner v. C. I. R., Respondent

ON PETITIONS FOR REVIEW OF THE DECISIONS OF THE TAX COURT OF THE UNITED STATES

BRIEF FOR THE RESPONDENT

MITCHELL ROGOVIN,
Assistant Attorney General

LEE A. JACKSON,
JONATHAN S. COHEN,
ROBERT H. SOLOMON,
Attorneys,
Department of Justice,
Washington, D. C. 20530

(Filed Feb. 9, 1967)

****

(p.50) Taxpayer argues at considerable length that, once the Tax Court rejected the Commissioner's determination that nothing had been expended for black market purchases, it was erroneous to impose the burden of proof on him (taxpayer) as to the amount of such purchases. (Br. 67-70.).

In the first place, we have no quarrel with the legal proposition that when the Commissioner's determination of a deficiency has been shown to (p.51) be invalid the presumption of correctness attaching to this determination is then out of the case, and the Commissioner, not the taxpayer, has the burden of proving whether any deficiency exists and, if so, the amount. Weir v. Commissioner 283 F. 2d 675, 682 (C.A. 6th); Cohen v. Commissioner, 266 F. 2d 5, 11 (C.A. 9th); Welch v. Commissioner, 297 F. 2d 309, 311 (C.A. 4th); Estate of Sperling v. Commissioner, 341 F. 2d 201, 204 (C.A. 2d); Robert Louis Stevenson Apartments, Inc. v. Commissioner, 337 F. 2d 681 (C.A. 8th). This does not end the matter, however. In the present case the Tax Court found the Commissioner's determination that there had been no black market purchases was unjustified, whereupon the Commissioner introduced evidence that there had been such purchases to the extent of $100,000. This evidence adduced by the Commissioner clearly "rehabilitated" the deficiency determination, inasmuch as taxpayer did not then meet his burden of rebutting it. The point that taxpayer misses is that a taxpayer never loses his burden of showing that the Commissioner's determination is wrong, and that if the Commissioner can support his deficiency determination even without the aid of the presumption of correctness the burden remains on the taxpayer to discredit the Commissioner's extrinsic proof. United Aniline Co. v. Commissioner, 316 F. 2d 701, 704 (C.A. 1st). Taxpayer here clearly failed to do this.

LIBRARY
SUPREME COURT, U. S.

FILED
OCT 11 1967
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 716

WILLIAM R. JACKSON,
WILLIAM R. & ALICE J. JACKSON,
CLEVELAND CHAIR COMPANY,

Petitioners

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent

APPENDIX B TO

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

RICHARD P. JAHN
Tanner & Jahn
12th Floor, Volunteer Bldg.
Chattanooga, Tennessee

Attorney for Petitioners

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12 01164 Plaintiff's Exh B

CLEVELAND CHAIR CO., INC. -1D- CORPORATION ORGANIZATION

SEARS-COMMUNITY STATE BANK CHICAGO

NAMES		SPECIMEN SIGNATURES	
W. R. Jackson	WILL SIGN	W. R. Jackson	PRESIDENT
W. B. Randolph	WILL SIGN	W. B. Randolph	VICE PRESIDENT
	WILL SIGN		TREASURER
	WILL SIGN	2/27/57	SECRETARY
J. E. Cate Jr	WILL SIGN	J E Cate Jr	ASSISTANT TREASURER
	WILL SIGN		ASSISTANT SECRETARY

PLEASE SIGN FOOTNOTE

THE ABOVE SIGNATURES ARE HEREBY CERTIFIED AS GENUINE AND ARE AUTHORIZED IN ACCORDANCE WITH PAPERS OF AUTHORITY ON FILE WITH YOUR BANK.

March 6, 1957
DATE

SECRETARY (OR OTHER OFFICER)

FORM 287 REV. 3M 4-59 S.H.CO.

In receiving and handling items for deposit or collection this bank acts only as its customer's collecting agent and assumes no responsibility beyond the exercise of due care. All items are credited or entered subject to final payment in cash or collection. This bank or its correspondents may, as its customer's agent, accept the draft or credit of any bank or any drawer, payee or payor as payment in lieu of cash. It may charge back any item, whether returned or not, including items drawn on this bank, at any time before final payment.

It may transmit any item for collection to any Federal Reserve Bank and such item shall be subject to the rules, regulations and procedures now in force or hereafter promulgated, of such Federal Reserve Bank or by the Board of Governors of the Federal Reserve System. Items payable in the City of Chicago, or in any suburb thereof may be collected through the Chicago Clearing House Association and will be subject to its rules and regulations now in force or hereafter adopted.

This Bank endeavors to forward items payable outside of Chicago on day of receipt, but it is understood that they need not be forwarded until the following business day. Those items received through the Lobby Depository which require customary collection procedure shall be considered as having been received as of the regular business day following the date placed in the Depository.

This bank shall not be construed to have received items sent by mail or placed in the Lobby Depository until the bank has either received actual delivery of the same from the U. S. Post Office or has removed the same from said Depository. Items placed in the Depository will be removed and provisionally credited not later than the next succeeding business day. During the period while such items are lodged in the Depository, the bank's relationship is solely that of a bailee.

Address Cleveland, Tenn. Phone

Business Mfrs. of Chairs and Rockers Initial Dep. 10,000.00

Last Bank Account

Introduced by J. M. Archer

Relations with other Departments

References none requested

References Account Opened by JMA

Remarks

Exhibit C

Resp. Ex C Ex C

EAST CHATTANOOGA BRANCH

HAMILTON NATIONAL BANK

CHATTANOOGA, TENNESSEE

Feb. 10, 1945

Sears Community State Bank
Chicago, Ill.

Attention Mr. A. V. Roulo, Ass't Vice President.

Dear Mr. Roulo:

I am glad indeed to favor you with the enclosed Cashier's Check, No. 12755, in the amount of $10,000.00, in favor of Sears Community State Bank. I will appreciate very much your placing it on my personal account as indicated by the enclosed signature Card. When proper entries are made, kindly forward Pass Book to W. R. Jackson, c/o Jackson Manufacturing Company, 2000 Rinemderf St., Chattanooga, Tennessee.

Very truly yours,

W. R. Jackson

Encls. 3

1095a

RESP. EX. D

EX D

Chattanooga, Tenn., Feb 8, 1945 194

HAMILTON NATIONAL BANK
CHATTANOOGA, TENN.

EAST CHATTANOOGA BRANCH

87-36

PAID

No. 12755

$ 10,000.00

Pay to the order of Sears Community State Bank.

EAST CHATT. $10000 & 00 CTS. DOLLARS

CASHIER'S CHECK

ASSISTANT CASHIER

Exhibit D

Exhibit F

OFFICERS

DIRECTORS

SEARS-COMMUNITY STATE BANK

CHICAGO 24, ILL.

April 18th, 1952.

Mr. W. O. Randolph
Cleveland Chair Company, Inc.
Cleveland, Tennessee

Dear Mr. Randolph:

We acknowledge your letter of April 15th enclosing a check signed by Mr. W. R. Jackson to cover withdrawal of his personal checking account.

As per your instructions we had this check made out for $10,000.00, payable to our order, for which we are sending you our Cashier's Check #M 87082, payable to Mr. W. R. Jackson.

Please tell Mr. Jackson that we appreciated very much the account which he maintained here, and sincerely hope that at the first opportunity he will reopen the account. We also appreciate the very nice account of the Cleveland Chair Company, Inc. and trust you will feel free to call on us at any time if we can be of service to you.

I am looking forward to seeing you and Mr. Jackson again at the forthcoming furniture exhibit at the Furniture Mart in June.

Yours very truly,

A. V. Houle
Assistant Vice-President

AVH:el

RECEIVED
APR 19 1952
CLEVELAND CHAIR CO., INC.

Exhibit I

1097a

8/3

Chattanooga, Tenn. May 3, 1944 193

90 after date I promise to pay to the order of

The Exchange Bank of St. Augustine
ST. AUGUSTINE, FLORIDA

Forty thousand & 00/100 DOLLARS $40,000.00

Exchange Bank No. 1600

PAID
AUG 8 - 1944

DOLLARS

Chattanooga, Tenn.

Bond Co. 11910

Exhibit J

Resp. Exhibit J

AUTHORIZED SIGNATURES OF MAY 3 19 44

Mr. ( )
Mrs. ( )
Miss ( )
Firm ( )
Joint account ( )

TENNESSEE

The EXCHANGE BANK OF ST. AUGUSTINE and the undersigned hereby mutually agree that all the notes, drafts, checks or other papers purchased by the Bank from the undersigned, or received by it for credit or collection, from or through the undersigned are purchased or received subject to the actual receipt of proceeds thereof by the Bank, and that these said papers or the proceeds shall be at the risk of the undersigned, and the Bank shall not be liable for the loss thereof or for default, negligence or failure of its agents, correspondents or others to whom the paper may have been entrusted for collection. The Bank is authorized in its discretion to send any cash paper drawn on the Bank on which it is drawn, or at which it is made payable, to accept in return the check of any other bank or banks, and to charge to the undersigned's account any paper not actually realized on, any items lost in transit and any bank check on which this bank fails to realize the full amount, or undersigned's proceeds part of such deposit bank checks received as a remittance for a number of items.

All depositing checks will be presented for payment not later than the business day following their deposit, and if dishonored will be charged to depositor's account or presented to him for payment the following day. Liability of endorsers on checks certified at Bank's request shall not cease until such items are paid.

The signatures of persons authorized to draw checks which the bank will recognize in payment of funds or for the transaction of other business on account of the undersigned are hereby given below.

The undersigned authorizes the bank in its discretion to make the customary service charge against this account.

This MAY 3 1944 day of 19

Sign here
HF
Sign here
HF

Address

Number of Signatures Required

2

Business

Initial Deposit $5,000.00

Introduced by
Former Banking Connection

1

Affiliation

Reference

Officer Accepting

Teller Accepting

Remarks

Date Account Opened 5/3/44

3

Resp. Exh K

...E EXCHANGE BANK
OF ST. AUGUSTINE
Savings Department

Book No. 6829

...PTH BT

Wm. H. P. Jackson

St. Augustine, Fla. 5-3-44 19...

Please list each check separately and state place of payment.

DOLLARS CENTS

Currency

Coin

CHECKS AS FOLLOWS:

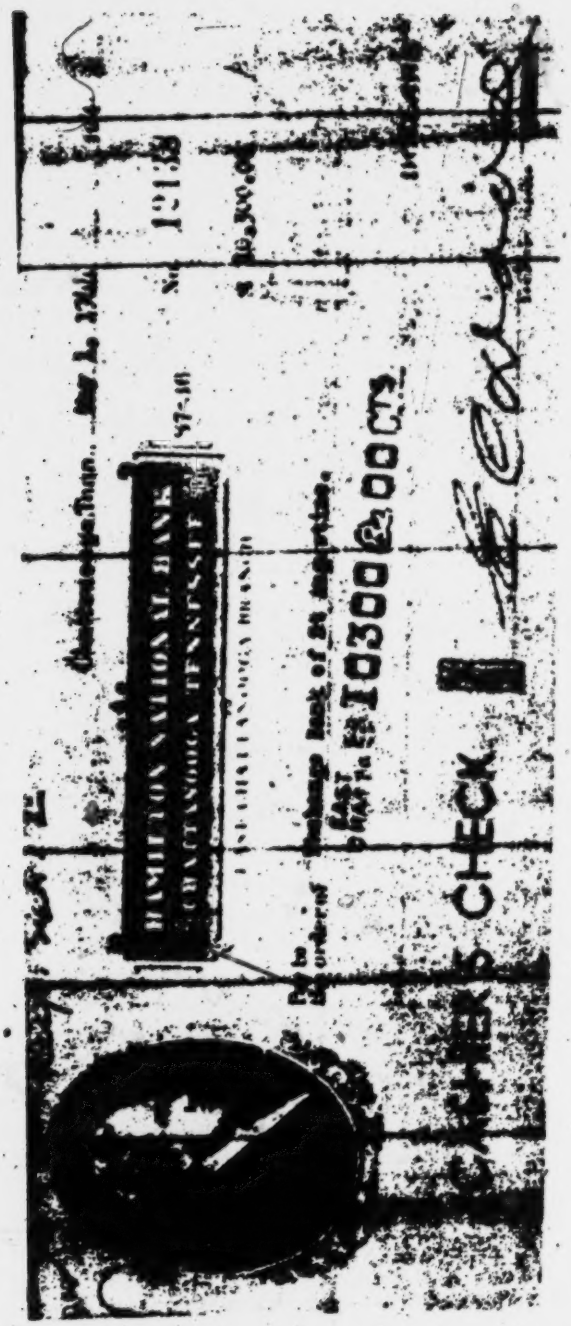
50,000 —

Send out for signature
Chattanooga, Tenn.

TOTAL $ 50,000 —

SEE THAT ALL CHECKS AND DRAFTS ARE ENDORSED 4

Exhibit L



Resp. Exh. M.

MR. W. [illegible] JACKSON

NO. 3629

JOINT ACCOUNT EITHER
MAY SIGN ( )
BOTH MUST SIGN ( )

ADDRESS

WHITE ( ) COLORED ( )

WITHDRAWALS	DEPOSITS	INTEREST	DATE	BALANCE
	50,000.00		MAY 3 '46	50,000.00 *
	83.33	IN	JUL 1 '46	50,083.33 IN *
40,000.00			AUG 9 '46	10,083.33 *
50.41		INT. 945	[illegible] 1 '46	10,133.74 *
	50.56	IN	JUL 1 '46	10,184.30 IN *
10,063.33			[illegible] 16 '46	10087 *
	1.00	IN	[illegible] 1 '46	10137 IN *
101.97			[illegible] 7 '46	.00 *

THE EXCHANGE BANK OF ST. AUGUSTINE

Resp: Exh. N

LIABILITY LEDGER

NAME Jackson, V. S.

ADDRESS

BUSINESS Chattanooga, Tenn.

AUTHORIZED CREDIT

OLD BALANCE	RATE	NOTE NO.	ENDORSER OR COLLATERAL	DATE	NEW NOTES	PAYMENTS	DATE	BALANCE
40,000.00	3	14991	Savings Account	AUG 3 44	40,000.00		MAY 3 44	40,000.00 *
	=	14991				40,000.00	AUG 9 44	.00 *

1102a

Exhibit N

Exhibit O

Resp. Exh. O

EAST CHATTANOOGA, TENN. — 194

PAY TO THE ORDER OF EXCHANGE BANK OF ST. AUGUSTINE ... $

EAST CHATTANOOGA 0000 00 CTS. DOLLARS

COUNTER CHECK

1103a

1104a

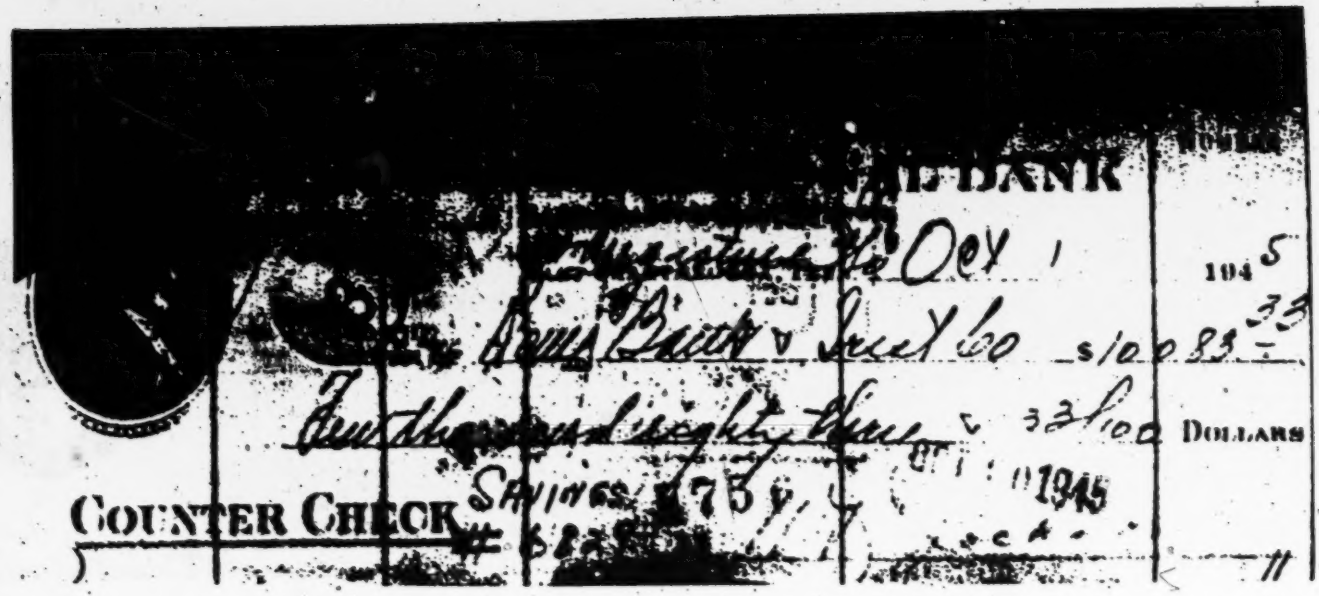


Exhibit P

Exhibit Q

1105a

HUNDREDS

Resp. Sch. ⊕

RECORD OF DRAFTS DRAWN ON THE FLORIDA NAT'L BANK
JACKSONVILLE, FLORIDA

DATE 10	PAYABLE TO THE ORDER OF	BY WHOM PURCHASED	NO.	AMOUNT	DATE PAID	EXCHANGE	DAILY TOTALS
	BROUGHT FORWARD						
	Federal Reserve Bk Jax	Ch	50	78381 45	JUL 2	5.00	
	" " "	War Loan Jc.	51	5000 -	JUL 2		
	Sta. Bank at Sand Cl	Ch # 9008	52	8986 -	JUL 2	4 -	
JUN 1945	1st Aug. Natl Bank	Ch	53	242198	JUL 2		
	Federal Reserve Jax	Ch	54	59392 69	JUL 2		
	Commercial Natl Cadwallader		55	19172	JUL 2	25	
	1st Aug Natl Bk		56	2222	JUL 2		
JUN 1945	Federal Reserve Jax	Ch	57	8723153	JUL 2	50	
	American Natl Jax	Ch	58	130.16	JUL 2	40	1.40
	The Lotan Co	Same	59	28251	JUL 2		
JUN 10 1945	1st Aug National Bk	Ch	60	1666966	JUL 2		
	The Federal Reserve Jax	Ch	61	8985026	JUL 2	3.75	
	" " "	War Loan Jc.	62	5000 -	JUL 2		
	The National Shawmut Bk Boston	Ch # 9009	63	14 -	JUL 2	100	
	The Barnett Bk of Key West	Ch # 9014	64	54475	JUL 2	125	
	National Bank of Ga	Ch # 9013	65	304 -	JUL 2	100	
JUN 11 1945	1st Aug Natl Bank		66	124482	JUL 2		
	Federal Reserve Bank		67	5956131	JUL 2		
	" " "	War Loan	68	5000 -	JUL 2		
JUN 13 1945	Federal Reserve Bank		69	1104725	JUL 2		

GENERAL SERVICES ADMINISTRATION

National Archives and Records Service
Washington 25, D.C.

IN REPLY REFER TO

A F F I D A V I T

CITY OF WASHINGTON }
DISTRICT OF COLUMBIA }

COMES NOW ROBERT H. BAHMER, who makes oath and says that he is the Acting Archivist of the United States; that under Federal Law the permanently valuable records of the Office of Price Administration (hereinafter referred to as "OPA"), which was established during World War II and continued for some years thereafter, were placed in the National Archives for safe keeping after the selective destruction of portions of these records had been authorized by the Congress; that the records deposited in the National Archives include case files for approximately 3,000 enforcement cases selected by OPA as worthy of retention from approximately one million enforcement cases initiated by OPA; that affiant has caused a diligent search to be made by his staff for any remaining OPA records pertaining to Jackson Manufacturing Company, 2000 Elmendorf Street, Chattanooga, Tennessee and Cleveland Chair Company, Cleveland, Tennessee; that no record whatsoever could be found in the National Archives pertaining to either of said companies other than a record of the allowance of a price increase in one instance on two models of upholstered sofa beds; that if there had been any instance investigated by the OPA of an alleged sale at "above OPA ceiling" prices by either of said companies, the OPA records pertaining to the investigation and/or prosecution of same, if still extant, should now be in the National Archives and not elsewhere, since the National Archives became the official depository of all such records from throughout the United States when the OPA ceased operations.

IN WITNESS WHEREOF affiant has affixed his signature and official seal this 14th day of November, 1963.

Robert H. Bahmer
Acting Archivist of the United States

National Archives of the United States
1434

Sworn to and subscribed before me this 14th day of November, 1963.

Notary Public

My Commission expires October 31, 1967

Exhibit 43

11958

Exhibit LLL

1107a

THE ROME BANK AND TRUST COMPANY, ROME, GA.

Sheet 1

Name W. R. JACKSON
HAMILTON NATIONAL BANK
Address EAST CHATTANOOGA, TENN

CHECKS		DEPOSITS	DATE	BALANCE	UNCOLLECTED DUE DATE
AMOUNT BROUGHT FORWARD					
		10,083.33	OCT 1'45	10,083.33*	
		[illegible]	[illegible]	[illegible]*	
	IN	50.54	JUN27'46	10,159.88*	
	IN	[illegible]	[illegible]	[illegible]*	
	IN	51.04	JUN1'47	[illegible]*	
	IN	51.56	JUN30'48	10,363.77*	
	IN	[illegible]	[illegible]	[illegible]	
	IN	52.07	JUN30'49	10,467.65*	
	IN	52.33	DEC31'49	10,519.98*	
			MATURITY	.00*	

10,519.98-

Exhibit MMM

Exhibit NNN → N109a

Exchange Bank of St Augustine
HAMILTON NATIONAL BANK
St Augustine Fla Oct 1 1945
PAY TO THE ORDER OF Home Bank & Trust Co $1003.33
Two thousand eight three & 33/100 Dollars
COUNTER CHECK
H. Y. Jackson

PAY TO THE ORDER OF ANY BANK, BANKER OR TRUST CO
OCT 1 1945
The Home Bank & Trust Company
64-1226 Bank Corner 64-1226

TAX COURT OF THE U.S.
MARKED FOR IDENTIFICATION
ADMITTED IN EVIDENCE
DEC 21 1953
PETITIONER'S EXHIBIT
RES. ONC. U.S. EXHIBIT NNN
DOCK'T. NO. 7081

14

1110a

THE ROME BANK AND TRUST COMPANY

ROME, GEORGIA April 16 1950 No.

PAY TO THE ORDER OF Clerk. Superior Court $10519.78

Ten thousand five hundred Eighty + 78/100 DOLLARS

FOR Superior Court Fees

Exhibit OOO

EAST CHATTANOOGA BRANCH

HAMILTON NATIONAL BANK

EAST CHATTANOOGA, TENN.

SHEET No. ____

NAME JACKSON HARP CO.,EAS ACCT.

SIGNATURE ____ ADDRESS ____

OLD BALANCE	DATE	CHECKS IN DETAIL	DATE	DEPOSITS	DATE	NEW BALANCE
		BALANCE BROUGHT FORWARD				
					29	164,950.19
167,087.87	29	107.68				
164,950.19	31	236.00 - 100.00 - 821.00 - 250.00 -				
	31	1,016.82 - 185.51 -				
	31	1,098.63 - 178.89 -				
	31	33.43 - 1,092.95	31	100,000.00	31	68,713.58
68,713.58	2	750.00 - 1,730.00 - 1,636.00			2	67,491.43
	2	1,178.79			3	66,539.29
67,491.43	3	250.00 - 1,682.24			4	87,039.22
66,539.29	4	1,111.87 - 871.42 - 1,536.68				
87,039.22	5	205.49 - 70.00 - 183.83 - 7,144.04			5	42,762.59
42,762.59	6	1.00 - 993.13			6	41,759.46
41,759.46	8	205.49 - 823.65			8	41,730.32
41,730.32	9	43,000.00 - 576.42			9	153.90
153.90	10	1,827.34			10	1,073.44
1,073.44 -	11	1.00 - 390.40 - 2,838.40 -			11	304,641.10
304,641.10 -	12	330.00 - 1,800.00 - 7,249.35	12	450.00	12	7,016.26
7,016.26 -	14	1,990.64 - 25.00 - 5,066.57			14	14,898.57
14,898.57 -	15	450.00 -	15		15	14,448.57
21,398.57 -			15	45,000.00	15	23,601.43
23,601.43	15	1,539.18 - 7,135.81			15	21,171.42
21,171.42	16	5,301.96			16	16,411.30
16,411.30	17	388.14 - 85.92 - 7,433.39	17	91,557.10	17	80,363.58
80,363.58	18	117.45 - 2087.00 - 49.00 -			18	78,391.02
	18	160.80 - 6,645.24				
78,391.02	19	200.00 - 4,248.73			19	74,122.29
74,122.29	21	15.00 - 4,171.04 - 800.00 - 501.25			21	69,427.00
69,427.80	22	5,995.56			22	63,431.44
63,431.44	23	250.00 - 1,259.94			23	61,945.50
61,945.50	24	7,372.31			24	54,573.19
		750.00 - 1,286.47			25	52,537.72

Exhibit XXX

1111a

1112a

Chattanooga, Tenn., DEC 5 1944 194

HAMILTON NATIONAL BANK
CHATTANOOGA, TENN.

87-36

No. 12628

EAST CHATTANOOGA BRANCH

$ 10,298.13

Pay to the order of MERCHANTS BANK, Cleveland, Tenn.

EAST CHATTA. $10298&13CTS. DOLLARS

CASHIER'S CHECK

E C Woodall Jr.
ASSISTANT CASHIER

Exhibit 5-N

Exhibit 5-O

Chattanooga, Tenn. May 1, 1944 194

HAMILTON NATIONAL BANK
CHATTANOOGA, TENN.
EAST CHATTANOOGA BRANCH

87-36
78

No. 1213

$ 10,300.00

Pay to the order of Exchange Bank of St Augustine.

EAST CHATT. $10300 00 CTS DOLLARS

CASHIER'S CHECK

E Edwards
ASSISTANT CASHIER

1113a

1114a

Chattanooga, Tenn., Feb 8, 1945 194

PAID

HAMILTON NATIONAL BANK
CHATTANOOGA, TENNESSEE

87-36

No. 12755

EAST CHATTANOOGA BRANCH

$ 10,000.00

Pay to the order of Sears [illegible] Bank.

EAST CHATTA $10000 & 00 CTS DOLLARS

CASHIER'S CHECK

[signature]

AUTHORIZED CASHIER

Exhibit 5-P

Part of Ex 47

87-36
NUMBER

HAMILTON NATIONAL BANK
EAST CHATTANOOGA BRANCH

EAST CHATTANOOGA, TENN. June 5, 1946

PAY TO THE ORDER OF Hamilton National Bank, East Chattanooga Branch $ 50,800.00

EXACTLY FIFTY THOUSAND EIGHT HUNDRED AND 00 CTS DOLLARS

COUNTER CHECK
Note

Mrs. A. J. Jackson

Part of Ex 47

NAME MRS ALICE J JACKSON

ADDRESS

IN ACCOUNT WITH
HAMILTON NATIONAL BANK
CHATTANOOGA, TENN.
EAST CHATTANOOGA BRANCH

SAFE DEPOSIT BOXES FOR RENT

STATEMENT OF YOUR ACCOUNT TO CLOSE OF BUSINESS
PLEASE EXAMINE AT ONCE. IF NO ERROR IS REPORTED IN TEN DAYS THE ACCOUNT WILL BE CONSIDERED CORRECT

DATE	CHECKS IN DETAIL	DATE	DEPOSITS
	BALANCE BROUGHT FORWARD		
MAR 11	430.02	MAR 11	7,800.00
MAR 15	105.25		
MAR 18	7,353.19		
		MAR 20 '46	200.00
		MAY 15 '46	1,975.4
		MAY 16 '46	233.6
JUN 5	50,800.00	JUN 5	51,800.00
AUG 2 '46	2,223.03	JUL 26 '46	5,533.33
	2,223.03		9,245.7
SEP 14 '46	9493		

Service charge.....cents will be charged on next statement.

BALANCE AT CLOSE OF BUSINESS 380.15

This statement is furnished to our customers instead of balancing the pass book. It saves you the trouble of bringing your pass book to the bank and waiting for it to be balanced. These statements will be found very convenient to check up and file

USE YOUR PASS BOOK ONLY AS A RECEIPT BOOK IN MAKING DEPOSITS.

TEXT IS POOR

Exhibit 47

1115a

HAMILTON NATIONAL BANK
CHATTANOOGA, TENNESSEE

CHATTANOOGA, TENN. _____ 19__

90 DAYS AFTER DATE I PROMISE TO PAY TO

THE ORDER OF THE HAMILTON NATIONAL BANK

Fifty thousand 00/100 DOLLARS

AT THE HAMILTON NATIONAL BANK

VALUE RECEIVED WITH LEGAL RATE OF INTEREST AFTER MATURITY UNTIL PAID. IF THIS NOTE IS COLLECTED BY AN ATTORNEY, BY SUIT OR OTHERWISE, WE AGREE TO PAY ALL ATTORNEY'S FEES AND COSTS OF COLLECTION. IT IS AGREED BY MAKERS AND INDORSERS HEREOF, THAT DEMAND, PROTEST AND NOTICE OF PROTEST OF THIS NOTE ARE EXPRESSLY WAIVED, AND THAT THE HOLDER MAY GRANT AN EXTENSION, OR EXTENSIONS OF THE TIME OF PAYMENT OF THIS NOTE OR ANY PART THEREOF TO THE SAME OR ANY OTHER PERSONS WITHOUT RELEASING THE LIABILITY OF ANY OTHER PARTIES HEREUNDER LIABLE WHO HEREBY EXPRESSLY WAIVE NOTICE OF ANY EXTENSION OF TIME, AND RENOUNCE AGAINST THEM, IN EVERY EVENT, ALL RIGHTS UNDER THE HOMESTEAD EXEMPTION LAWS.

DUE _____

NO. _____

FORM 100

W. D. Jackson

A. J. Jackson

HAMILTON NATIONAL BANK
CHATTANOOGA, TENNESSEE

$ 20,000.00 CHATTANOOGA, TENN. July 1st 1945

Six months DATE AFTER DATE I PROMISE TO PAY TO

THE ORDER OF THE Hamilton National Bank

Fifty thousand 00/100 DOLLARS

AT THE HAMILTON NATIONAL BANK

VALUE RECEIVED WITH LEGAL RATE OF INTEREST AFTER MATURITY UNTIL PAID. IF THIS NOTE IS COLLECTED BY AN ATTORNEY, BY SUIT OR OTHERWISE, WE AGREE TO PAY ALL ATTORNEY'S FEES AND COSTS OF COLLECTION. IT IS AGREED BY MAKERS AND INDORSERS HEREOF, THAT DEMAND, PROTEST AND NOTICE OF PROTEST OF THIS NOTE ARE EXPRESSLY WAIVED, AND THAT THE HOLDER MAY GRANT AN EXTENSION, OR EXTENSIONS OF THE TIME OF PAYMENT OF THIS NOTE OR ANY PART THEREOF TO THE SAME OR ANY OTHER PERSONS WITHOUT RELEASING THE LIABILITY OF ANY OTHER PARTIES HEREUNDER LIABLE WHO HEREBY EXPRESSLY WAIVE NOTICE OF ANY EXTENSION OF TIME, AND RENOUNCE AGAINST THEM, IN EVERY EVENT, ALL RIGHTS UNDER THE HOMESTEAD EXEMPTION LAWS.

DUE _____

NO. _____

FORM 100

W. D. Jackson

HAMILTON NATIONAL BANK
CHATTANOOGA, TENNESSEE

$ 50000 CHATTANOOGA, TENN. Jan 1 19 45

6 mo DAYS AFTER DATE I PROMISE TO PAY TO

THE ORDER OF THE HAMILTON NATIONAL BANK

Fifty thousand DOLLARS

AT THE HAMILTON NATIONAL BANK

VALUE RECEIVED WITH LEGAL RATE OF INTEREST AFTER MATURITY UNTIL PAID. IF THIS NOTE IS COLLECTED BY AN ATTORNEY, BY SUIT OR OTHERWISE, WE AGREE TO PAY ALL ATTORNEY'S FEES AND COSTS OF COLLECTION. IT IS AGREED BY MAKERS AND INDORSERS HEREOF, THAT DEMAND, PROTEST AND NOTICE OF PROTEST OF THIS NOTE ARE EXPRESSLY WAIVED, AND THAT THE HOLDER MAY GRANT AN EXTENSION, OR EXTENSIONS OF THE TIME OF PAYMENT OF THIS NOTE OR ANY PART THEREOF TO THE SAME OR ANY OTHER PERSONS WITHOUT RELEASING THE LIABILITY OF ANY OTHER PARTIES HEREUNDER LIABLE WHO HEREBY EXPRESSLY WAIVE NOTICE OF ANY EXTENSION OF TIME, AND RENOUNCE AGAINST THEM, IN EVERY EVENT, ALL RIGHTS UNDER THE HOMESTEAD EXEMPTION LAWS.

DUE _____

NO. _____

FORM 100

W. D. Jackson

HAMILTON NATIONAL BANK
CHATTANOOGA, TENNESSEE

$ 50000 CHATTANOOGA, TENN. July 1 19 45

90 DAYS AFTER DATE DUE PROMISE TO PAY TO

THE ORDER OF THE HAMILTON NATIONAL BANK

Fifty thousand DOLLARS

AT THE HAMILTON NATIONAL BANK

VALUE RECEIVED WITH LEGAL RATE OF INTEREST AFTER MATURITY UNTIL PAID. IF THIS NOTE IS COLLECTED BY AN ATTORNEY, BY SUIT OR OTHERWISE, WE AGREE TO PAY ALL ATTORNEY'S FEES AND COSTS OF COLLECTION. IT IS AGREED BY MAKERS AND INDORSERS HEREOF, THAT DEMAND, PROTEST AND NOTICE OF PROTEST OF THIS NOTE ARE EXPRESSLY WAIVED, AND THAT THE HOLDER MAY GRANT AN EXTENSION, OR EXTENSIONS OF THE TIME OF PAYMENT OF THIS NOTE OR ANY PART THEREOF TO THE SAME OR ANY OTHER PERSONS WITHOUT RELEASING THE LIABILITY OF ANY OTHER PARTIES HEREUNDER LIABLE WHO HEREBY EXPRESSLY WAIVE NOTICE OF ANY EXTENSION OF TIME, AND RENOUNCE AGAINST THEM, IN EVERY EVENT, ALL RIGHTS UNDER THE HOMESTEAD EXEMPTION LAWS.

DUE _____

NO. _____

FORM 100

W. D. Jackson

Mrs. W. R. Jackson

HAMILTON NATIONAL BANK
CHATTANOOGA, TENNESSEE

$ 50000 CHATTANOOGA, TENN. Aug 1 19 45

90 DAYS AFTER DATE I PROMISE TO PAY TO

THE ORDER OF THE HAMILTON NATIONAL BANK

Fifty thousand DOLLARS

AT THE HAMILTON NATIONAL BANK

VALUE RECEIVED WITH LEGAL RATE OF INTEREST AFTER MATURITY UNTIL PAID. IF THIS NOTE IS COLLECTED BY AN ATTORNEY, BY SUIT OR OTHERWISE, WE AGREE TO PAY ALL ATTORNEY'S FEES AND COSTS OF COLLECTION. IT IS AGREED BY MAKERS AND INDORSERS HEREOF, THAT DEMAND, PROTEST AND NOTICE OF PROTEST OF THIS NOTE ARE EXPRESSLY WAIVED, AND THAT THE HOLDER MAY GRANT AN EXTENSION, OR EXTENSIONS OF THE TIME OF PAYMENT OF THIS NOTE OR ANY PART THEREOF TO THE SAME OR ANY OTHER PERSONS WITHOUT RELEASING THE LIABILITY OF ANY OTHER PARTIES HEREUNDER LIABLE WHO HEREBY EXPRESSLY WAIVE NOTICE OF ANY EXTENSION OF TIME, AND RENOUNCE AGAINST THEM, IN EVERY EVENT, ALL RIGHTS UNDER THE HOMESTEAD EXEMPTION LAWS.

W. D. Jackson

Exhibit 48

N16

HAMILTON NATIONAL BANK
CHATTANOOGA, TENNESSEE
DUE
NO.
CHATTANOOGA, TENN.
30
DATE AFTER DATE
HAMILTON NATIONAL BANK
DOLLARS

1118a

Exhibit 50

Ex 50
also part of
Ex 76

87-36
NUMBER

HAMILTON NATIONAL BANK

EAST CHATTANOOGA BRANCH

EAST CHATTANOOGA, TENN. Jan 7 1940

PAY TO THE ORDER OF Hamilton Bk $275.00

Two hundred seventy five and no/100 DOLLARS

COUNTER CHECK

L. R. Dickson

TEXT

IS POOR

Exhibit 51

Exhibit 52

ANALYSIS OF FICTITIOUS BANK ACCOUNTS

By W. R. Jackson Counsel

INDEX

SCHEDULE 1 - Copy of Schedule 14 from report of December 30, 1952 by Examining Officer J. B. Strader

SCHEDULE 2 - Copy of Schedule 13 from report of December 30, 1952 by Examining Officer J. B. Strader

SCHEDULE 3 - Analysis of R A R Bank Deposit Data for year 1941

SCHEDULE 4 - Analysis of R A R Bank Deposit Data for year 1942

SCHEDULE 5 - Analysis of R A R Bank Deposit Data for year 1943

SCHEDULE 6 - Analysis of R A R Bank Deposit Data for year 1944

SCHEDULE 7 - Analysis of R A R Bank Deposit Data for year 1945

SCHEDULE 8 - Analysis of Withdrawals from Fictitious accounts

SCHEDULE 9 - Miscellaneous Data re: Fictitious Accounts

JACKSON TAX CASES

COPY OF SCHEDULE 14 FROM REPORT OF DECEMBER 30, 1952

BY EXAMINER OFFICER J. B. BRANNON

SCHEDULE 14 - YEARS 1941-1945 , Incl.

ADDITIONAL INCOME - BANK DEPOSITS

Year	Name of Account		Amount	Transfers, etc.	Income of: W. R. Jackson	Jackson Mfg. Co.	SCHEDULE 1 Cleveland Chair Co.
1941	Mrs. W. R. Jackson	(Rct)	$ 3,150.00		$ 1,950.00	$ 1,200.00	
	W. R. Jackson		16,800.20		2,607.63	14,192.57	
TOTALS 1941			19,950.20		4,557.63	15,392.57	
1942	Mrs. W. R. Jackson	(Rct)	1,468.31			1,468.31	
	W. R. Jackson		4,321.68			4,321.68	
	Wooten and Jackson		5,539.65			5,539.65	
	John Jones		23,601.72	5,708.00		14,566.12	3,327.60
	Checks Cashed		250.00			250.00	
TOTALS 1942			35,181.36	5,708.00		26,145.76	3,327.60
1943	John Jones		115,896.53			112,316.20	3,580.33
	Jolly Jewell		79,674.89			4,333.08	75,339.81
	Howard Johnson		61,532.69	16,268.07		24,908.63	20,755.99
	Thomas Rogers		25,000.00	25,000.00			
	Samual Johnson [Jackson*]		25,000.00	25,000.00			
	Melvin Lee		25,000.00	25,000.00			
	Bertha Jewell		71,378.12	9,769.03		20,603.22	41,003.87
	W. R. Wooten		80,429.45	25,000.00		55,429.45	
	Herbert Jewell		66,066.26			3,792.13	62,274.13
	Checks Cashed		4,056.29			3,879.01	177.28
TOTALS 1943			594,034.25	126,037.10		234,865.72	203,131.41
1944	Jolly Jewell		32,917.43				32,917.43
	John Jones		8,516.52			8,516.52	
	Ralph Wooten		35,984.48			35,984.48	
	Rae Iobill		12,000.00	12,000.00			
	Jim Jolly		12,000.00	12,000.00			
	Checks Cashed		10,447.80			5,708.14	4,639.66
TOTALS 1944			111,866.23	24,000.00		50,209.14	37,577.09
1945	Checks Cashed		20,041.68			8,232.94	11,808.74
TOTALS 1945			20,041.68			8,232.94	11,808.74

*Correction of Apparent Error in Original Schedule

[JACKSON TAX CASES]

COPY OF SCHEDULE 13 FROM REPORT OF DECEMBER 30, 1952

BY EXAMINING OFFICER J. B. [illegible]

SCHEDULE 13 - YEARS 1940-1952, Incl.

[EXHIBIT NUMBER]

W. R. Jackson

Name of Account	Name of Bank	1940	1941	1944	1945	1946	1947	1948	1949
(1) John Jones	Hamilton Nat'l B. Chattanooga Branch	$	$ 270.10	$ 296.30	$ 283.70	$ 235.48	$ 237.00	$ 239.10	$ 241.40
(2) Herbert Jewell	" " " " "			290.30	88.15	46.95			
(3) Howard Johnson	" " " " "			181.30	267.60	119.04	120.10	121.15	122.30
(4) John [Jolly*] Jewell	" " " " "		38.60	419.75					
(5) Jim Jolly	" " " " "				73.05	86.50			
(6) Roe Isbill	" " " " "				22.75	8.95			
(7) W. R. Jackson	Exchange Bank of St. Augustine, Fla.			83.33	100.97	1.00			
(8) W. R. Jackson	Rome Bank and Trust Co., Rome, Georgia				85.83	101.33	102.34	103.77	104.40
(9) TOTALS			308.70	1,210.98	726.43	538.85	459.44	463.62	468.10
(10) Applicable to W. R. Jackson - 55% of Item 9			169.79	666.04	426.04	296.37	252.69	254.99	257.46
(11) W. R. Jackson - Personal Acct.	Hamilton Nat'l B. Chattanooga Branch	18.90							
(12) TOTALS - W. R. Jackson		18.90	169.79	666.04	426.04	296.37	252.69	254.99	257.46
(13) Applicable to Alice J. Jackson - 45% of Item 9			138.91	544.94	300.39	242.48	206.75	208.63	210.64
(14) Mr. [Mrs.*] W. R. Jackson - Personal Acct.	Hamilton Nat'l B. Chattanooga Branch	31.60	49.80	99.15	143.40	99.84	221.90	493.33	142.43
(15) TOTALS - Alice J. Jackson		31.60	188.71	644.09	443.79	342.32	428.65	702.98	353.07
(16) TOTALS - W. R. and Alice J. Jackson		44.90	358.50	1,310.13	899.83	638.69	681.34	956.97	610.53

* Correction of Apparent Error in Original Schedule

JACKSON TAX CASES

ANALYSIS OF R A R BANK DEPOSIT DATA FOR YEAR 1941

SCHEDULE 1

Date	Name of Account	Type of Account	Name of Bank	Deposits	Alleged To Be Income of Jackson Mfg. Co.	Alleged To Be Income of W. R. Jackson
June 30, 1941	Mrs. W. R. Jackson	Savings	Hamilton National Bank-East Chattanooga Branch	1,950.00		1,950.00
Dec. 31, 1941	Mrs. W. R. Jackson	Savings	Hamilton National Bank-East Chattanooga Branch	1,200.00	1,200.00	
June 30, 1941	W. R. Jackson	Savings	Hamilton National Bank-East Chattanooga Branch	2,607.63		2,607.63
Dec. 31, 1941	W. R. Jackson	Savings	Hamilton National Bank-East Chattanooga Branch	14,192.57	14,192.57	
TOTALS				19,950.20	15,392.57	4,557.63

JACKSON TAX CASES

ANALYSIS OF R / R BANK DEPOSIT DATA FOR YEAR 1942

SCHEDULE A

Deposit Date	Name of Account	Endorsement	Deposits	Transfers Etc.	Cashed Checks	Alleged To Be Income of Jackson Mfg. Co.	Alleged To Be Income of Cleveland Chair Company
Mar. 4, 1942	Check Cashed	Jackson Manufacturing Company			131.23	131.23	
Mar. 25, 1942	Wooten and Jackson	Jackson Manufacturing Company	107.25			107.25	
Mar. 27, 1942	Wooten and Jackson	Jackson Manufacturing Company	71.01			71.01	
April 6, 1942	Wooten and Jackson	Jackson Manufacturing Company	207.50			207.50	
April 10, 1942	Wooten and Jackson	Jackson Manufacturing Company	101.44			101.44	
April 15, 1942	Wooten and Jackson	Jackson Manufacturing Company	231.23			231.23	
April 17, 1942	Wooten and Jackson	Jackson Manufacturing Company	300.00			300.00	
May 5, 1942	Wooten and Jackson	Jackson Manufacturing Company	246.94			246.94	
May 24, 1942	Wooten and Jackson	Jackson Manufacturing Company	272.04			272.04	
May 26, 1942	Wooten and Jackson	Jackson Manufacturing Company	196.30			196.30	
June 5, 1942	Wooten and Jackson	Jackson Manufacturing Company	559.94			559.94	
June 10, 1942	Wooten and Jackson	Jackson Manufacturing Company	3,246.00			3,246.00	
June 17, 1942	John Jones	From Wooten and Jackson	5,708.00	5,708.00			
June 18, 1942	Check Cashed	Jackson Manufacturing Company			56.00	56.00	
July 2, 1942	John Jones	Jackson Manufacturing Company and Cleveland Chair	222.94			180.48	42.46
July 8, 1942	John Jones	Jackson Manufacturing Company	42.00			42.00	
July 13, 1942	John Jones	Jackson Manufacturing Company	1,777.71			1,777.71	
July 22, 1942	John Jones	Jackson Manufacturing Company	178.61			178.61	
July 24, 1942	John Jones	Cleveland Chair Company	595.48				595.48
Aug. 7, 1942	John Jones	Cleveland Chair Company	176.54				176.54
Aug. 17, 1942	John Jones	Jackson Manufacturing Company	96.68			96.68	
Sept. 2, 1942	John Jones	Jackson Manufacturing Company	554.57			554.57	
Sept. 4, 1942	John Jones	Jackson Manufacturing Company	30.24			30.24	
Sept. 9, 1942	John Jones	Jackson Manufacturing Company and Cleveland Chair	277.88			241.50	36.38
Sept. 28, 1942	John Jones	Jackson Manufacturing Company	413.80			413.80	
Oct. 13, 1942	John Jones	Jackson Manufacturing Company	2,127.04			2,127.04	
Oct. 13, 1942	John Jones	Jackson Manufacturing Company	195.00			195.00	
Oct. 28, 1942	Check Cashed	Jackson Manufacturing Company			62.77	62.77	
Nov. 10, 1942	John Jones	Jackson Manufacturing Company and Cleveland Chair	3,388.69			1,659.00	1,729.69
Nov. 24, 1942	John Jones	Jackson Manufacturing Company	1,659.97			1,659.97	
Dec. 3, 1942	John Jones	Jackson Manufacturing Company and Cleveland Chair	2,280.36			2,074.45	206.31
Dec. 14, 1942	John Jones	Jackson Manufacturing Company	1,404.63			1,404.63	
Dec. 23, 1942	John Jones	Jackson Manufacturing Company	290.00			290.00	
Dec. 31, 1942	John Jones	Jackson Manufacturing Company and Cleveland Chair	2,180.98			1,640.44	540.54
1942	W. R. Jackson	Jackson Manufacturing Company	1,468.31			1,468.31	
1942	Mrs. W. R. Jackson	Jackson Manufacturing Company	4,321.68			4,321.68	
TOTALS			34,931.36	5,708.00	250.00	26,145.76	3,327.60

JACKSON TAX CASES

ANALYSIS OF R A R BANK DEPOSIT DATA FOR 1943

SCHEDULE 5

Deposit Date	Name of Account	Endorsement	Deposits	Transfers Etc.	Checks Cashed	Alleged To Be Income: Jackson Mfg. Co.	Alleged To Be Income: Cleveland Chair Company
Jan. 13, 1943	John Jones	Jackson Manufacturing Company and Cleveland Chair	354.33			332.33	22.00
Jan. 25, 1943	Check Cashed	Jackson Manufacturing Company and Cleveland Chair			134.32	14.20	120.12
Feb. 12, 1943	John Jones	Jackson Manufacturing Company and Cleveland Chair	1,453.01			402.48	1,050.53
Feb. 23, 1943	John Jones	Jackson Manufacturing Company and Cleveland Chair	782.89			630.81	152.08
Feb. 26, 1943	Check Cashed	Jackson Manufacturing Company			214.62	214.62	
Feb. 27, 1943	John Jones	Jackson Manufacturing Company	5,456.15			5,456.15	
Mar. 4, 1943	Jolly Jewell	Cleveland Chair Company	10,932.95				10,932.95
Mar. 4, 1943	John Jones	Jackson Manufacturing Company	7,176.37			7,176.37	
Mar. 12, 1943	John Jones	Jackson Manufacturing Company	5,000.00			5,000.00	
Mar. 16, 1943	John Jones	Jackson Manufacturing Company	454.34			454.34	
Mar. 16, 1943	Jolly Jewell	Jackson Manufacturing Company	300.70			300.70	
Mar. 18, 1943	Jolly Jewell	Cleveland Chair Company	4,799.72				4,799.72
Mar. 18, 1943	John Jones	Jackson Manufacturing Company and Cleveland Chair	14,624.95			12,269.23	2,355.72
Mar. 18, 1943	Checks Cashed	Jackson Manufacturing Company			174.80	174.80	
April 2, 1943	Jolly Jewell	Jackson Manufacturing Company	809.66			809.66	
April 2, 1943	John Jones	Jackson Manufacturing Company	11,651.27			11,651.27	
April 12, 1943	John Jones	Jackson Manufacturing Company	5,000.00			5,000.00	
April 26, 1943	John Jones	Jackson Manufacturing Company	1,095.00			1,095.00	
April 26, 1943	Jolly Jewell	Jackson Manufacturing Company	856.44			856.44	
April 30, 1943	Check Cashed	Jackson Manufacturing Company			207.04	207.04	
May 5, 1943	John Jones	Jackson Manufacturing Company	350.00			350.00	
May 5, 1943	Jolly Jewell	Jackson Manufacturing Company	312.08			312.08	
May 10, 1943	John Jones	Jackson Manufacturing Company	1,500.00			1,500.00	
May 12, 1943	John Jones	Jackson Manufacturing Company	3,378.39			3,378.39	
May 22, 1943	John Jones	Jackson Manufacturing Company	979.86			979.86	
May 22, 1943	Jolly Jewell	Jackson Manufacturing Company	184.01			184.01	
June 3, 1943	John Jones	Jackson Manufacturing Company	4,100.00			4,100.00	
July 1, 1943	John Jones	Jackson Manufacturing Company	1,831.05			1,831.05	
July 19, 1943	John Jones	Jackson Manufacturing Company	24,578.04			24,578.04	
July 19, 1943	Jolly Jewell	Jackson Manufacturing Company and Cleveland Chair	22,694.87			245.20	22,449.67
July 20, 1943	John Jones	Jackson Manufacturing Company	7,653.60			7,653.60	
July 20, 1943	Checks Cashed	Jackson Manufacturing Company			1,428.32	1,428.32	
July 20, 1943	Howard Johnson	From Account of John Jones	16,868.07	16,868.07			
July 20, 1943	Thomas Rogers	From Account of John Jones	25,000.00	25,000.00			
July 20, 1943	Samuel Jackson	From Account of John Jones	25,000.00	25,000.00			
July 20, 1943	Melvin Lee	From Account of John Jones	25,000.00	25,000.00			
July 20, 1943	Bertha Jewell	From Account of Jolly Jewell	9,769.03	9,769.03			
July 27, 1943	Jolly Jewell	Jackson Manufacturing Company and Cleveland Chair	17,886.56			2,786.99	15,041.57

JACKSON TAX CASES

ANALYSIS OF R A R BANK DEPOSIT DATA FOR 1943

(CONCLUDED)

SCHEDULE 5

Deposit Date	Name of Account	Endorsement	Deposits	Transfers Etc.	Checks Cashed	Alleged To Be Income: Jackson Mfg. Co.	Alleged To Be Income: Cleveland Chair Company
Aug. 27, 1943	W. E. Wooten	Jackson Manufacturing Company	60,178.73	(1)25,000.00		35,178.73	
Aug. 27, 1943	Bertha Jewell	Cleveland Chair Company	33,329.65				33,329.65
Aug. 30, 1943	Check Cashed	Jackson Manufacturing Company			1,787.52	1,787.52	
Sept. 13, 1943	John Jones	Jackson Manufacturing Company	18,477.28			18,477.28	
Sept. 13, 1943	Bertha Jewell	Cleveland Chair Company	7,716.57			42.35	7,674.22
Sept. 13, 1943	Checks Cashed	Cleveland Chair Company			57.16		57.16
Sept. 21, 1943	Checks Cashed	Jackson Manufacturing Company			52.51	[illegible].51	
Oct. 26, 1943	Howard Johnson	Cleveland Chair and Jackson Manufacturing Company	23,218.03			2,468.04	20,749.99
Oct. 26, 1943	Bertha Jewell	Jackson Manufacturing Company	20,562.87			20,562.87	
Nov. 24, 1943	W. E. Wooten	Jackson Manufacturing Company	20,250.72			20,250.72	
Nov. 24, 1943	Jolly Jewell	Cleveland Chair	22,115.90				22,115.90
Dec. 15, 1943	Herbert Jewell	Cleveland Chair and Jackson Manufacturing Company	66,066.26			3,792.13	62,274.13
Dec. 15, 1943	Howard Johnson	Jackson Manufacturing Company	22,046.59			22,046.59	
TOTALS			549,277.94	126,037.10	4,056.29	224,865.72	201,131.41

(1) From Account of Thomas Rogers

JACKSON TAX CASES

ANALYSIS OF B A B BANK DEPOSIT DATA FOR YEAR 1944

SCHEDULE 6

Deposit Date	Name of Account	Endorsement	Deposits	Transfers, Etc.	Checks Cashed	Allegad To Be Income of: Jackson Mfg. Co.	Allegad To Be Income of: Cleveland Chair Company
Jan. 8, 1944	Jelly Jewell	Cleveland Chair Company	38,917.43				38,917.43
Jan. 8, 1944	John Jones	Jackson Manufacturing Company	8,516.98			8,516.98	
Jan. 31, 1944	Ralph Wooten	Jackson Manufacturing Company	35,984.48			35,984.48	
Feb. 25, 1944	Check Cashed	Jackson Manufacturing Company			1,993.79	1,993.79	
Mar. 15, 1944	Check Cashed	Cleveland Chair Company			38.60		38.60
Mar. 18, 1944	Check Cashed	Cleveland Chair Company			70.60		70.60
April 17, 1944	Check Cashed	Cleveland Chair Company			60.34		60.34
May 1, 1944	Check Cashed	Cleveland Chair Company			31.50		31.50
May 26, 1944	Check Cashed	Jackson Manufacturing Company			3,766.85	3,766.85	
Sept. 12, 1944	Check Cashed	Cleveland Chair Company			4,458.62		4,458.62
Sept. 15, 1944	Rae Isbill	From Account of Herbert Jewell	12,000.00	12,000.00			
Sept. 15, 1944	Jim Jelley	From Account of Herbert Jewell	12,000.00	12,000.00			
Dec. 23, 1944	Check Cashed	Jackson Manufacturing Company			27.22	27.22	
TOTALS			101,418.43	24,000.00	10,447.80	50,889.14	37,577.09

JACKSON TAX CASES

ANALYSIS OF B.A.R. BANK DEPOSIT DATA FOR YEAR 1945

(TAXPAYER'S EXHIBIT CASES)

SCHEDULE 7

Date 1945	Endorsement	Alleged To Be Income of Jackson Mfg. Co.	Alleged To Be Income of Cleveland Chair Co.
Feb. 5	Cleveland Chair Company		40.92
Mar. 7	Cleveland Chair Company		49.75
Apr. 23	Cleveland Chair Company		38.45
Apr. 23	Cleveland Chair Company		30.08
Apr. 23	Jackson Manufacturing Company	1,561.51	
Apr. 23	Jackson Manufacturing Company	4,457.35	
Apr. 23	Cleveland Chair Company		1,485.88
Apr. 23	Cleveland Chair Company		2,015.38
Apr. 23	Cleveland Chair Company		450.00
June 6	Cleveland Chair Company		1,835.68
June 6	Cleveland Chair Company		
June 6	Jackson Manufacturing Company	2,214.08	
July 23	Cleveland Chair Company		418.80
July 23	Cleveland Chair Company		68.80
Sept. 6	Cleveland Chair Company		2,872.77
Sept. 10	Cleveland Chair Company		195.65
Sept. 14	Cleveland Chair Company		965.68
Sept. 14	Cleveland Chair Company		1,300.33
Oct. 18	Cleveland Chair Company		40.63
	TOTALS	8,232.94	11,808.74

JACKSON TAX CASES

ANALYSIS OF WITHDRAWALS FROM FICTITIOUS ACCOUNTS

SCHEDULE B

	Date	Amount	Transferred	1942	1943	1944	1945	1946	1947	1948	1949
Wooten aka Jackson	6-17-42		5,539.65								
Thomas Rogers	8-28-43	25,000.00			25,000.00						
Jim Jolley	10-10-44	2,270.19				2,270.19					
	7-17-45	4,500.00					4,500.00				
	4-10-46	5,329.36						5,329.36			
Jolly Jewell - Bertha Jewell	7-20-47 (1)		5,769.03								
	4- 1-44	100,000.00				100,000.00					
	4- 3-44	3,014.14				3,014.14					
	7- 3-44	267.50				267.50					
Howard Johnson	11-26-43	30,000.00			30,000.00						
	10-17-44	20,000.00				20,000.00					
	1- 9-46	11,000.00						11,000.00			
	7-21-49	5,000.00									5,000.00
	7-29-49	6,000.00									6,000.00
	7-30-49	1,329.18									1,329.18
John Jones	7-20-43		91,268.07								
	8-12-43	2,000.00			2,000.00						
	10- 4-43	2,000.00			2,000.00						
	11-26-43	20,000.00			20,000.00						
	2- 8-45	10,000.00					10,000.00				
	7-21-49	5,000.00									5,000.00
	7-21-49	10,000.00									10,000.00
	7-26-49	5,000.00									5,000.00
	7-29-49	4,000.00									4,000.00
	7-30-49	324.98									324.98
Roe Isbill	12-11-44	10,298.13				10,298.13					
	4-10-46	1,723.17						1,723.17			
Herbert Jewell	4- 6-44	30,000.00				30,000.00					
	4-29-44	10,000.00				10,000.00					
	9-15-44	15,000.00				15,000.00					
	9-23-44	500.00				500.00					
	9-27-44	1,500.00				1,500.00					
	4-10-46	9,436.66						9,436.66			
TOTALS		~~330,493.31~~ 329,493.31	106,576.75	-0-	79,000.00	~~102,849.96~~ 101,849.96	14,500.00	~~27,489.39~~ 16,489.19			36,654.16

[redacted]

[redacted]

[redacted]	[redacted]
[redacted]	71,378.32
[redacted]	25,000.00 *
[redacted]	25,000.00 *
[redacted]	35,969.18
[redacted]	[redacted]
212,792.05	

* Shown to be transferred accounts from John Jones account.

February 13, 1945

Mr. W. R. Jackson
c/o Jackson Mfg. Co.
2000 Elmendorf St.
Chattanooga, Tenn.

Dear Mr. Jackson:

We were very happy to receive your check in the amount of $10,000.00, which we have credited to your personal account. We wish to express our sincere appreciation for this business and to welcome you as one of our depositors. We trust that you will make full use of our facilities, and that you will call on us whenever we can be of any service to you.

Mr. Ware, 601, Sears, Roebuck and Co. was in Saturday, and told me of his pleasant visit with you recently. He was glad to know that you had opened your personal account. We are eagerly looking forward also to the pleasure of serving one of your good companies, and hope that you will be in a position to favor us with a company account soon.

Enclosed you will find passbook, showing credit for your initial deposit. Under separate cover, I am forwarding to you a supply of envelopes and deposit slips, together with a personal check folder with some fillers. Should you desire to use larger checks, instead of the folder type, please let me know, and I will send you a supply.

We are planning on a trip to visit our customers in the spring, and will make it a point to drop in to see you. In the meantime, should you come to Sears, we hope you will find the opportunity of dropping in at the bank to get acquainted with our other officers.

With best personal regards, I am

Sincerely yours,

AVR:JS
Enc.

Ass't. Vice President

Exhibit 58

6/1 58

58
58

THE COMMERCIAL NATIONAL BANK

CAPITAL AND SURPLUS $240,000.00

FOUNDED IN 1889 AS THE COMMERCIAL BANK

CEDARTOWN, GA.

May 31, 1946

List of notes held as collateral to note of E. G. Dodd in the amount of $30,000.00.

Artis Christian Bill Penney	204.00
Henry Christian Bill Penney	206.60
Jim Conley Bill Penney	241.26
Harry Dodd, New Ford	632.60
J. D. Elkins	7,400.00
G. W. Jackson	2,000.00
A. E. Jernigan	1,558.00
L. R. Jernigan Chas Standifer A. E. Jernigan	2,150.00
Bill Penney	5,000.00
H. O. Shuptrine Mortgage	7,500.00
Meyer Winer	550.00
Total	27,442.46
Bank	3,902.41
	23,544.87

If this is Changed, which it will from time to time, I will give you a revised list. Enclosed herein to you yesterday data and hope to be seeing you more soon. E. G. Dodd -

EX 59

W. R. JACKSON AND ALICE J. JACKSON

BOOKS, RECORDS AND DATA MAINTAINED

	Records Available
W. R. Jackson	
Bank Statements and cancelled checks -	
(a) Regular checking a/c N. H. B.	Some originals in 1946
(b) Savings a/c N. H. B.	No originals
(c) W. R. Jackson "Special" N. H. B.	No originals
(d) Wasten and Jackson a/c	No originals
(e) Mr. or Mrs. Checking a/c N. H. B.	No originals
(f) W. R. Jackson - Merchant's Bank, Cleveland	Few originals
(g) Jackson Farms a/c - Merchant's Bank, Cleveland	No originals
(h) Bond Book	
(i) Jackson Farms	
Alice J. Jackson (Mrs. W. R.)	
Bank Statements and Cancelled Checks -	
(a) Regular Checking a/c N. H. B.	Some in 1946
(b) Savings a/c N. H. B.	Pass Book Available
(c) Checking Account - Merchant's Bank	Some

Some Addenda at Trial

JACKSON TAX CASES

BOOKS, RECORDS AND REPORTS MAINTAINED

Jackson Manufacturing Company	Records Available
1. General Journal	Part 1947
2. Voucher Checks Disbursement	Part 1947 and 1948
3. Invoices - sales	Part 1944 and 1945
4. Invoices - payables	Part 1943, 1944 and 1945
5. Bank Statements	No originals
6. Cancelled Checks	No originals
7. Bills of Lading	Few in 1944
8. Receiving Reports	None
9. General Ledger	1944 through 1949
10. Accounts Receivable Cards	None (typed yearend lists 1943 through 1948)
11. Employee Earnings Records	None
12. Inventory Cards	None
13. Cost Sheets	Some in 1940, 1941 and 1942
14. Weekly Reports	Some scattered throughout years
15. Monthly Profit and Loss Statements	None
16. Minutes	Available
17. Stock Book	Available

JACKSON TAX CASES

BOOK, RECORDS AND REPORTS MAINTAINED

Cleveland Chair Company, Inc.	Records Available
1. General Journal	None
2. Voucher Checks Disbursement	None
3. Invoices - Sales	Part 1944 and 1945
4. Invoices - Payables	Part 1943, 1944 and 1945
5. Bank Statements	No originals
6. Cancelled Checks	No originals
7. Bills of Lading	None
8. Receiving Reports	None
9. General Ledger	1944, 1946 through 1949
10. Accounts Receivable Cards	None
11. Employee Earnings Records	None
12. Inventory Cards	None
13. Cost Sheets	Some scattered throughout years
14. Weekly Reports	Some scattered throughout years
15. Monthly Profit and Loss Statements	None
16. Minutes	Available
17. Stock Book	Available

JACKSON TAX CASES

SCHEDULE OF INTEREST PAYMENTS

SHOWN OR CLAIMED

	CLEVELAND CHAIR COMPANY			JACKSON MANUFACTURING COMPANY							
	Per Audits	Per Corporate Returns Where Different	Total By Years	Per Statements of Operations In Tax Returns	Per Partnership Audits	Per Corporate Audits	Total By Years	W. R. Jackson Per Returns	A. J. Jackson Per Returns	W. R. and A. J. Jackson Per Returns	Grand Total By Years
1937				387.92			387.92				
1938				586.28			586.28				
1939				608.70			608.70	608.70			
1940		1,100.31	1,100.31	46.45			46.45	46.45	-0-		46.45
1941		1,138.60	1,138.60	-0- *			-0-	-0-	-0-		-0-
1942	447.89		447.89		-0-		-0-	1,250.00	-0-		1,697.89
1943	350.14		350.14		-0-		-0-	-0-	-0-		350.14
944	-0-		-0-		-0-		-0-	880.00	720.00		1,600.00
1945	50.57	-0-	50.57		306.69		306.69	955.00	1,145.00		2,457.26
1946	-0-		-0-			2,935.27	2,935.27	-0- **	-0- **		3,531.12
1947	4.97		4.97			-0-	-0-	-0-	-0-		4.97
1948	-0-	18.47	18.47			100.00	100.00			-0-	118.47
1949	-0-	-0-	-0-			83.33	83.33			-0-	83.33
TOTAL			3,110.95				5,054.64	3,740.15	1,865.00	-0-	9,889.63

* No Statement of Operations accompanying return.

* Only standard deduction taken in returns; however, following interest is known to have been paid in 1946 to Hamilton National Bank:

Mr. W. R. Jackson $175.83
Mrs. A. J. Jackson $420.02

* Cleveland Chair Company interest shown eliminated prior to 1942, all duplications eliminated in all years shown.

Ex 61

JACKSON TAX CASES

COMPARATIVE SCHEDULE OF NET INCOME (per Tax Returns Filed) AND FEDERAL INCOME TAXES

FROM TAX RETURNS

	1941	1942	1943	1944	1945	1946	1947	1948	1949
NET INCOME BEFORE TAXES:									
Cleveland Chair Co. (Corporation)*	-0-	26,149.32	72,029.08	104,640.20	169,282.59	340,383.88	249,389.53	305,013.37	287,976.67
Jackson Manufacturing Co. (Corporation)**	-0-	-0-	-0-	-0-	-0-	453,918.65	228,138.30	123,158.35	248,386.26
W. R. Jackson***	29,931.39	44,802.63	59,402.32	99,097.16	103,349.82	60,891.84	46,122.77	68,229.48	89,481.97
Mrs. A. J. Jackson***	11,762.01	23,027.62	41,222.80	75,223.67	78,821.73	36,345.93	21,165.00	32,415.00	38,515.00
Total	41,693.40	99,979.57	172,654.20	278,961.03	351,454.14	891,540.30	538,755.60	522,816.14	574,899.90
FEDERAL INCOME TAX:									
Cleveland Chair Co. (Corporation)	-0-	11,176.06	47,694.37	71,965.79	124,120.53	129,345.87	94,616.08	115,905.08	78,749.91
Jackson Manufacturing Co. (Corporation)	-0-	-0-	-0-	-0-	-0-	172,489.09	84,392.12	46,800.17	94,363.98
W. R. Jackson	8,546.03	4,827.66	32,902.82	65,731.05	69,420.62	31,126.52	20,169.78	40,860.42	55,649.46
Mrs. A. J. Jackson	2,183.19	3,055.61	21,448.08	46,541.19	49,862.79	15,927.89	6,613.04		
Total	10,729.22	19,059.33	102,045.27	184,238.03	243,403.94	348,889.37	205,790.96	203,565.67	228,763.37

* Acquired by Mr. & Mrs. Jackson in 1942

** Partnership incorporated in 1946

*** Before non-business deductions and exemptions

JACKSON TAX CASES

COMPARISON OF PERCENTAGE OF NET INCOME TO NET SALES

	1941	1942	1943	1944	1945	1946	1947	1948	1949
& Bradstreet - Furniture Manufacturers (over 100 concerns each year)	3.10	2.71	3.31	4.63	4.52	5.82	5.24		
Economic Almanac For 1953-1954 - Furniture and Finished Lumber Products (After taxes)	4.7	3.3	3.0	3.4	3.0	5.2	4.9	4.0	2.9
thern Furniture Manufacturers' Association Upholsterers(Before Taxes)	6.38	5.42	6.19	6.46	8.53				
kson Manufacturing Company - Per Tax Return (Before Taxes)	4.52	9.46	9.57	13.99	12.71	23.25	15.80		
- Per Tax Return (After Taxes)						14.42	9.80		
- Per Addition of deficiency to sales and net profit (Before Taxes)	7.53	12.87	27.02	17.40	13.22				
- Per addition of deficiency to sales and net profit (After Taxes)									
- Per Addition of deficiency to sales and purchases (Before Taxes)	4.37	9.11	7.72	13.43	12.64				
- Per Addition of deficiency to sales and purchases (After Taxes)									
eland Chair Company, Inc. - Per tax return (Before Taxes)	4.32	3.72	6.61	8.04	10.27	15.21	16.32	17.58	12.83
- Per tax return (After Taxes)	3.35	2.13	2.23	2.59	2.74	9.26	10.12	10.90	7.96
- Per addition of deficiency to sales and net profit (before taxes)		4.19	21.33	10.60	10.83				
- Per Addition of deficiency to sales and net profit (after taxes)		2.22	4.32	2.44	2.40				
- Per addition of deficiency to sales and purchases (before taxes)		3.69	5.57	7.82	7.48				
- Per Addition of deficiency to sales and purchases (after taxes)		1.72	(11.44)	(.34)	(.95)				

COMPARATIVE STATEMENTS

OF

OPERATIONS

WITH

COST DATA

JACKSON MANUFACTURING COMPANY

CLEVELAND CHAIR COMPANY, INCORPORATED

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JACKSON MANUFACTURING COMPANY

AVERAGE GROSS PROFIT PERCENTAGES

PER COST SHEETS AND O.P.A.

CEILING PRICES

SUMMARY

EXHIBIT 1

	Cost	Selling Price	Percent Gross Profit
Average Gross Profit to Retailers - Chairs	88.84	122.80	27.66%
Average Gross Profit to Jobbers - Chairs	88.84	111.75	22.55
Average Gross Profit to Retailers - Suites	366.43	476.85	16.76
	776.11	749.80	
Average Gross Profit			19.23%

JACKSON MANUFACTURING COMPANY

AVERAGE GROSS PROFIT PERCENTAGES ON CHAIRS

PER COST SHEETS AND O.P.A. CEILING PRICES

SHEET 2

Majority Sold to Jobbers Description	Grade	Date of Cost Sheet	Sold To	Cost	O.P.A. Selling Price		Percent Gross Profit
305 Chair	3	April 11, 1941	Retailer	11.23		14.75	23.86%
			Jobber	11.23	16.85 Less 20%	13.47	16.63
306 Base Rocker	9	April 14, 1941	Retailer	11.92		17.35	31.30
			Jobber	11.92	19.95 Less 20%	15.96	25.32
315 Base Rocker	7	April 9, 1941	Retailer	10.74		16.05	33.09
			Jobber	10.74	18.60 Less 20%	14.88	28.23
345 Base Rocker	8	Feb. 23, 1942	Retailer	11.97		16.30	26.57
			Jobber	11.97	18.35 Less 20%	14.68	18.47
1310 Lawson Chair	8	Aug. 14, 1941	Retailer	12.59		16.75	24.84
			Jobber	12.59	18.70 Less 20%	14.96	15.85
2135 Barrell Chair	9	Dec. 30, 1941	Retailer	16.24		23.15	29.85
			Jobber	16.24	25.50 Less 20%	20.40	20.40
2125 Chair	10	Aug. 14, 1941	Retailer	14.15		18.45	23.31
			Jobber	14.15	21.75 Less 20%	17.40	18.68
Average Gross Profit				177.68		234.55	24.25%
Average Gross Profit to Retailers				88.84		122.80	27.66%
Average Gross Profit to Jobbers				88.84		111.75	22.52%

TEXT IS POOR

JACKSON MANUFACTURING COMPANY

AVERAGE GROSS PROFIT PERCENTAGES ON SUITES

PER COST SHEETS AND O.P.A. CEILING PRICES

SHEET 1

Majority Sold to Retailers Description		Grade	Date of Cost Sheet	Sold To	Cost	O.P.A. Selling Price	Percent Gross Profit
1360	2 Piece Suite	9	Jan. 3, 1942	Retailers	47.89	58.50	18.14%
1135	2 Piece Suite	8	March 9, 1942	Retailers	31.88	36.25	12.06
1230	2 Piece Sofa Bed Suite	8	March 17, 1942	Retailers	33.46	40.95	18.29 *
1230	2 Piece Sofa Bed Suite	8	Oct. 15, 1942	Retailers	37.58	40.95	8.23 *
115	3 Piece Suite	8	March 9, 1942	Retailers	38.39	46.67	17.74
1225	2 Piece Sofa Bed Suite	8	March 26, 1942	Retailers	35.00	43.05	18.70
180	3 Piece Suite	8	March 9, 1942	Retailers	39.80	47.53	17.53
125	2 Piece Suite	8	March 26, 1942	Retailers	34.60	42.90	19.35
1220	2 Piece Suite	9	Aug. 14, 1941	Retailers	30.67	39.25	21.86
1135	2 Piece Suite	9	Aug. 14, 1941	Retailers	32.45	37.75	14.04
1230	2 Piece Sofa Bed Suite	9	Aug. 14, 1941	Retailers	35.31	42.45	16.82
Average Gross Profit					396.43	476.25	16.76%

JACKSON MANUFACTURING COMPANY

STATEMENT OF OPERATIONS

FOR YEAR 1943

AFTER ADJUSTMENTS FOR ADDITIONAL SALES AND PURCHASES

	YEAR ENDED DEC. 31, 1943 ADDING UNREPORTED INCOME TO PURCHASES AND SALES	
	Amount	Percent
Sales - Net	940,537.87	
Add - E.A.R. Additional Income	224,865.72	
	1,165,403.59	100.00
Cost of Goods Sold	783,606.94	
Add - Effect of E.A.R. Additional Income to Purchases	224,865.72	
Cost of Goods Sold	1,008,472.66	86.56
Gross Profit	156,930.93	13.44
Selling Expenses	47,999.53	4.09
	108,931.40	9.35
Operating Expenses	13,370.65	1.15
	95,560.75	8.20
Other Income	8,085.46	0.69
	103,646.21	8.89
Other Expenses	19,010.09	1.63
Net Profit	84,636.12	7.26

JACKSON MANUFACTURING COMPANY

COMPARATIVE STATEMENT OF OPERATIONS FOR YEARS 1943 AND 1944

REFLECTING TAX RETURN AND ADJUSTMENTS TO SALES

PER REVENUE AGENT WITHOUT ADJUSTMENTS TO PURCHASES

	YEAR ENDED DECEMBER 31, 1943				YEAR ENDED DECEMBER 31, 1944			
	Per Tax Return	% To Sales	Per Revenue Agent	% To Sales	Per Tax Return	% To Sales	Per Revenue Agent	% To Sales
Sales - Net	940,537.87		940,537.87		1,216,744.34		1,216,744.34	
Add - R.A.R. Additional Income			224,865.72				50,289.14	
	940,537.87	100.00	1,165,403.59	100.00	1,216,744.34	100.00	1,267,033.48	100.00
Cost of Goods Sold	783,606.94	83.32	783,606.94	67.23	972,326.36	79.90	972,326.36	75.79
Gross Profit	156,930.93	16.68	381,796.65	32.77	244,417.98	20.10	294,707.12	24.21
Selling Expenses	47,999.53	5.12	47,999.53	4.12	54,124.43	4.46	54,124.43	4.44
Selling Profit	108,931.40	11.56	333,797.12	28.65	190,293.55	15.64	240,582.69	19.77
Operating Expenses	13,370.65	1.40	13,370.65	1.15	15,644.29	1.28	15,644.29	1.29
Operating Profit	95,560.75	10.16	320,426.47	27.50	174,649.26	14.36	224,938.40	18.48
Other Income	8,085.46	.86	8,085.46	.69	11,694.02	.96	11,694.02	.96
	103,646.21	11.02	328,511.93	28.19	186,343.28	15.32	236,632.42	19.44
Other Expenses	19,010.09	2.03	19,010.09	1.63	24,824.80	2.04	24,824.80	1.96
Net Profit	84,636.12	8.99	309,501.84	26.56	161,518.48	13.28	211,807.62	17.48

[redacted]

[redacted]

[redacted]

[redacted]

	For Period Ended December 31, 1941		For Period Ended December 31, 1942		For Period Ended December 31, 1943		For Period Ended December 31, 1944		For Period Ended December 31, 1945		For Period Ended December 31, 1946		For Period Ended December 31, 1947		For Period Ended December 31, 1948		For Period Ended December 31, 1949	
Sales - Net	471,880.11	100.00	668,139.48	100.00	940,537.07	100.00	1,216,744.34	100.00	1,408,417.44	100.00	1,698,488.01	100.00	1,405,719.75	100.00	1,241,129.56	100.00	1,380,488.74	100.00
Cost of Goods Sold	398,739.87	84.52	551,081.70	82.48	783,606.64	83.32	972,385.36	79.92	1,139,879.88	81.32	1,298,048.10	76.43	1,075,824.75	76.53	1,010,347.81	81.42	986,631.63	71.48
Gross Profit	73,080.24	15.48	117,057.78	17.52	156,930.93	16.68	244,417.98	20.10	268,538.16	18.61	371,439.91	23.87	329,895.00	23.47	230,781.75	18.58	393,769.11	28.52
Selling Expenses	24,335.49	5.15	37,754.88	5.66	47,999.53	5.12	56,124.43	4.46	57,774.38	3.18	53,911.68	2.76	51,491.53	3.66	50,761.31	4.09	63,137.57	4.64
Selling Profit	48,744.75	10.33	79,302.90	11.86	108,931.40	11.56	190,293.55	15.64	208,983.78	14.49	317,528.23	86.51	278,333.48	19.81	179,820.44	14.49	329,631.54	23.71
Administrative Expenses	7,203.73	1.53	11,999.67	1.77	13,370.65	1.40	19,644.89	1.38	14,899.85	1.03	20,493.25	1.36	44,108.14	3.14	47,653.18	3.84	57,898.43	4.16
Operating Profit	41,541.02	8.80	67,402.83	10.09	99,560.75	10.16	170,649.86	14.36	188,103.92	13.44	297,034.73	24.95	234,225.34	16.67	132,167.26	10.65	271,733.11	19.55
Other Income	8,678.75	1.88	8,458.90	1.26	8,085.46	0.86	11,694.02	0.96	10,893.01	0.77	10,484.78	0.72	16,397.90	1.16	15,750.62	1.26	18,778.54	0.98
	50,219.77	10.68	75,861.13	11.35	107,646.21	11.02	182,343.88	15.32	198,996.93	14.21	308,519.43	25.74	250,623.24	17.83	147,917.88	11.91	290,395.65	20.47
Other Expenses	12,072.37	2.60	17,989.88	2.67	18,018.09	2.03	26,824.88	2.04	28,250.78	2.02	30,982.78	2.61	38,435.68	2.81	35,710.07	2.87	47,229.08	3.40
Net Profit	38,147.40	8.08	57,931.45	8.68	84,636.12	8.99	156,518.68	13.28	168,707.81	12.12	277,536.71	23.13	211,187.61	15.02	112,207.81	9.04	243,375.57	17.07

CLEVELAND CRANE COMPANY, INCORPORATED

STATEMENT OF OPERATIONS

FOR YEAR 1943

AFTER ADJUSTMENTS FOR ADDITIONAL SALES

AND PURCHASES

	YEAR ENDED DEC. 31, 1943 AMOUNT SHOWN BEFORE INCOME TO PURCHASES AND SALES	
	Amount	Percent
Sales - Net	1,089,875.56	
Add - W.A.A.B. Additional Income	803,131.81	
Total Sales	1,893,007.37	100.00
Cost of Goods Sold	917,132.44	
Add - Effect of W.A.A.B. Additional Income to Purchases	803,131.81	
Cost of Goods Sold	1,189,853.89	86.64
Gross Profit	172,743.52	13.36
Selling Expenses	65,885.62	5.01
	107,517.87	8.35
Operating Expenses	19,400.68	1.51
	88,517.85	6.84
Other Income	11,893.56	0.87
	99,780.71	7.71
Other Expenses	86,941.63	8.08
Net Profit	78,779.08	5.63

CLEVELAND CHAIR COMPANY, INCORPORATED

COMPARATIVE STATEMENT OF OPERATIONS FOR YEARS 1943 AND 1944

REFLECTING TAX RETURN AND ADJUSTMENTS TO SALES

PER REVENUE AGENT WITHOUT ADJUSTMENTS TO PURCHASES

	YEAR ENDED DECEMBER 31, 1943				YEAR ENDED DECEMBER 31, 1944			
	Per Tax Return	% To Sales	Per Revenue Agent	% To Sales	Per Tax Return	% To Sales	Per Revenue Agent	% To Sales
Sales - Net	1,089,875.56		1,089,875.56		1,381,397.96		1,381,397.96	
W.A.N. Additional Income			803,131.41				57,577.09	
Total Sales	1,089,875.56	100.00	1,893,007.37	100.00	1,381,397.96	100.00	1,438,975.05	100.00
Cost of Goods Sold	917,132.44	84.14	917,132.44	70.47	1,084,158.84	83.31	1,084,158.84	89.97
Gross Profit	172,743.12	15.86	375,874.93	29.53	217,239.12	16.69	254,816.21	19.03
Selling Expense	64,825.65	5.95	64,825.65	3.48	70,063.82	5.38	70,063.82	5.84
Selling Profit	107,917.87	9.91	311,049.28	24.05	147,175.30	11.31	184,752.39	13.79
Operating Expenses	19,400.68	1.79	19,400.68	1.49	21,783.38	1.68	21,783.38	1.68
Operating Profit	88,517.85	8.12	291,648.66	22.56	125,391.92	9.63	162,969.01	12.17
Other Income	11,203.46	.92	11,203.46	.85	8,688.94	.67	8,688.94	.63
	99,720.71	9.07	302,852.12	23.42	134,080.86	10.30	171,589.95	12.81
Other Expenses	26,941.63	2.32	26,941.63	2.08	29,378.66	2.26	29,378.66	2.19
Net Profit	72,779.08	6.68	275,910.49	21.34	104,702.20	8.04	142,217.29	10.62

CLEVELAND CHAIR COMPANY

COMPARATIVE STATEMENTS OF OPERATIONS

FOR YEARS 1941 THROUGH 1949

	For Period Ended December 31, 1941		For Period Ended December 31, 1942		For Period Ended December 31, 1943		For Period Ended December 31, 1944		For Period Ended December 31, 1945		For Period Ended December 31, 1946		For Period Ended December 31, 1947		For Period Ended December 31, 1948		For Period Ended December 31, 1949	
Sales - Net	348,311.89	100.00	703,387.79	100.00	1,089,875.96	100.00	1,301,397.96	100.00	1,648,764.11	100.00	2,888,038.90	100.00	1,985,468.99	100.00	1,735,060.53	100.00	1,647,285.96	100.00
Cost of Goods Sold	342,014.24	98.86	608,156.90	86.46	911,138.44	83.14	1,084,128.84	83.31	1,349,737.68	81.86	1,719,494.80	78.02	1,196,879.68	75.80	1,291,712.69	74.45	1,277,854.85	77.61
Gross Profit	56,297.65	14.14	98,770.89	14.04	178,743.52	15.86	217,839.12	16.69	299,026.43	18.14	488,538.10	21.91	369,189.87	24.20	443,347.84	25.55	369,431.11	22.39
Selling Expenses	13,475.32	3.84	25,834.84	3.12	64,883.62	3.92	70,051.82	5.38	84,149.36	5.11	71,384.31	2.84	31,859.63	1.49	67,311.45	3.88	73,084.44	4.51
Selling Profit	40,822.33	10.85	68,736.65	8.42	107,917.87	9.91	147,173.30	11.31	214,866.07	13.03	411,153.79	19.67	317,388.64	20.80	376,036.39	21.67	289,127.07	17.88
Operating Expenses	17,252.13	4.83	28,088.68	3.15	19,400.68	1.79	21,781.38	1.68	24,431.01	1.48	38,138.36	1.73	39,238.89	1.31	51,610.84	2.98	64,411.61	3.98
Operating Profit	21,570.20	5.42	40,647.97	5.77	88,517.20	8.12	125,391.92	9.63	190,435.06	11.55	373,083.43	17.94	866,789.84	17.69	324,425.55	18.69	224,715.44	13.90
Other Income	1,349.50	0.84	5,719.69	0.98	11,263.16	0.95	8,620.94	0.67	11,128.00	0.68	16,369.35	0.73	13,948.08	0.98	18,003.01	1.04	16,768.23	1.02
	24,980.10	6.86	46,361.57	6.39	99,780.71	9.07	134,012.86	10.30	201,557.06	12.83	389,392.78	18.69	880,737.85	18.41	342,428.56	19.73	241,477.67	14.94
Other Expenses	9,401.37	2.36	13,661.13	8.83	86,241.63	8.32	89,372.66	6.86	33,228.47	2.12	55,640.05	2.53	48,789.33	2.81	49,717.78	2.81	45,888.68	2.89
Net Profit	15,518.73	1.60	30,706.44	4.36	78,779.08	6.66	104,640.80	8.04	168,038.59	10.13	333,728.73	16.16	838,008.53	15.69	293,710.84	16.92	195,893.87	12.14

Exhibit 72

Ex 72

87-36
NUMBER

HAMILTON NATIONAL BANK

EAST CHATTANOOGA BRANCH

EAST CHATTANOOGA, TENN. Dec. 15 1962

Savings

PAY TO THE ORDER OF W. B. Jackson $ 15,000.

Fifteen thousand 00/100 DOLLARS

OK 15M ENG Mrg

COUNTER CHECK

Mrs. W. B. Jackson

1177a

1178a

HAMILTON NATIONAL BANK
CHATTANOOGA, TENNESSEE.

$ 100 000 00

CHATTANOOGA, TENN. Dec 31 1945

30 DAYS AFTER DATE I PROMISE TO PAY TO

THE ORDER OF THE HAMILTON NATIONAL BANK

One Hundred & 00/100 DOLLARS

AT THE HAMILTON NATIONAL BANK

VALUE RECEIVED WITH LEGAL RATE OF INTEREST AFTER MATURITY UNTIL PAID. IF THIS NOTE IS COLLECTED BY AN ATTORNEY, BY SUIT OR OTHERWISE, WE AGREE TO PAY ALL ATTORNEY'S FEES AND COSTS OF COLLECTION. IT IS AGREED BY MAKERS AND ENDORSERS HEREOF THAT DEMAND, PROTEST AND NOTICE OF PROTEST OF THIS PAPER ARE EXPRESSLY WAIVED, AND THAT THE HOLDER MAY GRANT AN EXTENSION, OR EXTENSIONS OF THE TIME OF PAYMENT OF THIS NOTE OR ANY PART THEREOF TO THE MAKER WITHOUT RELEASING THE LIABILITY OF ANY OTHER PARTIES SECONDARY LIABLE WHO HEREBY EXPRESSLY WAIVE NOTICE OF SAID EXTENSION OF TIME, AND RECOURSE AGAINST WHOM IN SUCH EVENT IS EXPRESSLY RESERVED.

DUE

NO.

FORM 120

EAST CHATTANOOGA BRANCH CHATTANOOGA, TENN.

H. Jackson Mfg. Co.

By H. H. Jackson Pres.

Exhibit 75

87-36
NUMBER

HAMILTON NATIONAL BANK

EAST CHATTANOOGA BRANCH

EAST CHATTANOOGA, TENN. Dec 26 1945

PAY TO THE ORDER OF _____ $ 65

_____ DOLLARS

COUNTER CHECK

87-36
NUMBER

HAMILTON NATIONAL BANK

EAST CHATTANOOGA BRANCH

EAST CHATTANOOGA, TENN. Dec 26 1945

PAY TO THE ORDER OF _____ $ 65

_____ DOLLARS

COUNTER CHECK

NAME W. R JACKSON

ADDRESS

IN ACCOUNT WITH

HAMILTON NATIONAL BANK
CHATTANOOGA, TENN.
EAST CHATTANOOGA BRANCH

SAFE DEPOSIT BOXES FOR RENT

STATEMENT OF ACCOUNT TO CLOSE OF BUSINESS
PLEASE EXAMINE AT ONCE. IF NO ERROR IS REPORTED IN TEN DAYS THE ACCOUNT WILL BE CONSIDERED CORRECT

DATE	CHECKS IN DETAIL		DATE	DEPOSITS
	BALANCE BROUGHT FORWARD			927.25
			DEC31'45	105,185.61
JAN 4'46	2.00			
JAN 5'46	[illegible]			
JAN 9'46	[illegible]	18.75		
			JAN12'46	78,422.50
JAN18'46	50,000.00 Int R.U.			
			JAN21'46	1,300.00
JAN23'46	35.25			
JAN24'46	1,000.00			
JAN28'46	28,546.65	65.83		
JAN31'46	20.00			
			FEB 4'46	2,647.46
FEB10'46	11.00			
FEB18'46	150.00		FEB18'46	2,253.70
FEB19'46	903.00			
FEB23'46	100.00	16.50		
MAR 9'46	30.00		MAR 9'46	(8,000.00
MAR 16	10,156.02	4,806.83		
			MAR19'46	2,135.00
			MAR30'46	7,449.10
				40.00
MAR 2[illegible]	3,000.00			652.00
APR 7'45	22.00			
			MAY 2'46	2,281.20
	240.00			
			JUN 3	2,281.20
Service charge.....will be charged on next statement	5.00			
JUN 12'46	BALANCE AT CLOSE OF BUSINESS 1,579.93			
			JUL 5'46	16395

This statement is furnished to our customers instead of balancing the pass book. It saves you any trouble of balancing your pass book to the bank and waiting for it to be balanced. These statements will be found [illegible] to check your BANK

USE YOUR PASS BOOK ONLY AS A RECEIPT BOOK IN MAKING DEPOSITS.

Exhibit 76
1179a
(1181a)

MEMORANDUM FINDINGS OF FACT AND OPINION

Scott, Judge: Respondent determined deficiencies in petitioners' income taxes and additions to tax under section 293(b) of the Internal Revenue Code of 1939 as follows:

Docket No.	Petitioner	Calendar Year	Kind of Tax	Deficiency	Addition to tax under Sec. 293(b), I. R. C. 1939
70811	W. R. Jackson	1941	Income	$ 7,037.52	$ 3,992.75
		1942	Income	12,709.34	6,354.67
		1943	Income	194,883.84 *	98,418.14
		1944	Income	44,969.77	22,484.89
		1945	Income	10,531.13	5,265.57
		1946	Income	211.16	105.58
		1947	Income	165.63	82.82
70812	William R. Jackson and Alice J. Jackson	1948	Income	226.16	113.08
		1949	Income	402.96	201.48
70813	Cleveland Chair Company	1942	Income	-0-	32.08
		1942	Declared Value Excess Profits	219.63	114.10
		1942	Excess Profits	2,517.49	1,311.67
		1943	Declared Value Excess Profits	19,920.18	9,960.09
		1943	Excess Profits	152,469.13	76,239.57
		1944	Declared Value Excess Profits	2,460.68	1,239.34
		1944	Excess Profits	34,943.66	17,469.39
		1945	Declared Value Excess Profits	779.38	341.81
		1945	Excess Profits	15,811.15	7,366.17
70814	Alice Jewell Jackson	1941	Income	2,280.86	880.71
		1943	Income	7,398.39	3,618.15
		1943	Income	155,416.03 *	78,221.38
		1944	Income	38,262.35	18,131.13
		1945	Income	8,168.89	4,088.45
		1946	Income	211.36	105.69
		1947	Income	215.94	107.92

* Income and victory tax.

[1] Proceedings of the following petitioners are consolidated herewith: William R. Jackson and Alice J. Jackson, Docket No. 70812; Cleveland Chair Company, Docket No. 70813; and Alice Jewell Jackson, Docket No. 70814.

At the trial respondent conceded that there were no deficiencies in taxes due from either W. R. Jackson or Alice Jewell Jackson for the calendar year 1941.

The issues for decision are:

(1) Whether the Federal income tax returns filed by W. R. Jackson and Alice Jewell Jackson for the years, 1942, 1943, 1944, and 1945, by W. R. Jackson and Alice Jewell Jackson for the years 1946 and 1947, by Cleveland Chair Company for 1942 and the declared value excess profits tax returns and excess profits tax returns filed by Cleveland Chair Company for the years 1942, 1943, 1944, and 1945 were each false or fraudulent with intent to evade tax, so that the assessment or collection of a deficiency is not barred by the statute of limitations.

(2) Whether the partnership, Jackson Manufacturing Company, consisting of W. R. Jackson and Alice Jewell Jackson, and the corporation, Cleveland Chair Company, had unreported income in each of the years 1942, 1943, 1944, and 1945 as a result of understatement of gross sales; or whether there were additional purchases by each of these businesses in the full amounts by which sales were understated for which no deduction was taken in computing net income.

(3) Whether W. R. Jackson and Alice Jewell Jackson in each of the years 1942, 1943, 1944, and 1945 failed to report a portion of their distributal net income from the partnership, Jackson Manufacturing Company, because of understatement of net income of the partnership business on the partnership's return of income for each of those years.

(4) Whether W. R. Jackson and Alice Jewell Jackson received income from the Cleveland Chair Company, a corporation, in each of the years 1942, 1943, 1944, and 1945 which was not reported on their Federal income tax returns.

(5) Whether W. R. Jackson and Alice Jewell Jack-

son each failed to report interest income on their individual income tax returns for each of the years 1942, 1943, 1944, 1945, 1946, and 1947; and whether William R. Jackson and Alice Jewell Jackson failed to report interest income on their joint income tax returns for the years 1948 and 1949.

(6) Whether there is a deficiency in income tax due from W. R. Jackson for each of the years 1942 through 1947, from Alice Jewell Jackson for each of the years 1942 through 1947, and from William R. Jackson and Alice Jewell Jackson for the years 1948 and 1949; and a deficiency in declared value excess profits tax and excess profits tax due from the Cleveland Chair Company for each of the years 1942 through 1945, a part of which is due to fraud with intent to evade tax.

Findings of Facts

Some of the facts have been stipulated and are found accordingly.

William R. Jackson and Alice Jewell Jackson, husband and wife who reside in Chattanooga, Tennessee until 1944 or 1945, and thereafter resided in Cleveland, Tennessee timely filed separate income tax returns with the district director of internal revenue at Nashville, Tennessee for each of the years 1942 through 1947 and joint Federal income tax returns with the same district director of internal revenue for each of the years 1948 and 1949. Each of these returns was prepared by a certified public accountant or a lawyer or records and information furnished to him by William R. Jackson or Alice Jewell Jackson.

The Cleveland Chair Company, a Tennessee corporation, timely filed its corporate Federal income tax, excess profits tax and declared value excess profits tax returns for each of the years 1942 through 1945 with the district director of internal revenue at Nashville, Tennessee. Each of these

returns was prepared by a certified public accountant from the books and records of the corporation which were furnished to him. The Cleveland Chair Company was organized in 1915, and in early 1942 W. R. Jackson and Alice Jewell Jackson purchased the stock of this corporation, the stock so purchased being issued 55 percent to W. R. Jackson and 45 percent to Alice Jewell Jackson.

W. R. Jackson (hereinafter referred to as Jackson) was born on a farm near Cleveland, Tennessee, in 1906. He was the third oldest in a family of six. After having worked a short while in Cleveland, Ohio, Jackson went to Chattanooga, Tennessee, in 1925 or 1926 and began to do work as a furniture upholsterer. In 1933 Jackson started in business as a sole proprietor under the name of Jackson Upholstery Company repairing and refinishing furniture.

In 1931 Jackson married Alice Jewell. Alice Jewell Jackson (hereinafter referred to as Alice) was working in a hosiery mill in Chattanooga, Tennessee at the time she married Jackson. Her father had died when she was quite young and for a number of years prior to her marriage to Jackson she had been the sole support of herself, her mother, and younger brothers and sisters. Alice continued to work in the hosiery mill for a while after she married Jackson and she also assisted Jackson in his business.

Jackson went into bankruptcy in 1933 but subsequently paid off his creditors. Jackson has been in some type of business activity of his own ever since he started the Jackson Upholstery Company.

In 1936 Jackson and another organized the Jackson

Manufacturing Company as a partnership. This partnership was dissolved before the end of 1936, and from that time until June 30, 1941, Jackson operated the Jackson Manufacturing Company as a sole proprietorship. Jackson Manufacturing Company was in the business of making new furniture, primarily living room suites and upholstered chairs.

Alice assisted Jackson in his business in such ways as receiving customers, doing filing, or general office work depending on where her services were most needed. On June 30, 1941, Jackson gave a 45 percent intereswin Jackson Manufacturing Company to Alice, and from that date until its incorporation on January 1, 1946, Jackson Manufacturing Company was operated as a partnership, Jackson being a 55 percent partner and Alice a 45 percent partner. Alice continued to preform substantially the same type of work for the partnership that she had performed while her husband operated the business as a sole proprietorship. One of the reasons that Jackson gave a partnership interest in Jackson Manufacturing Company to Alice was the tax saving which would result from the splitting of the partnership income.

Jackson Manufacturing Company timely filed its Federal partnership returns of income for the period July 1, 1941, through December 31, 1941, and for the years 1942, 1943, 1944, and 1945 with the district director of internal revenue at Nashville, Tennessee. These returns for each of the years here involved were prepared by a certified public accountant or a lawyer from workpapers made by such accountant.

The formal education of Jackson and Alice each

consisted of completion of the Eighth Grade. Neither ever received any formal accounting or bookkeeping training.

Jackson and Alice purchased the stock of the Cleveland Chair Company of Cleveland, Tennessee around January 1, 1942, for $80,000. For the purpose of financing this purchase, they borrowed $80,000 from the East Chattanooga Branch of the Hamilton National Bank on a 15-year loan, but repaid the entire amount of the loan to that bank within 7 or 8 months. Throughout the years 1942 through 1945 the stock of the Cleveland Chair Company was owned 55 percent by Jackson and 45 percent by Alice.

Jackson and Alice lived about three blocks from the plant of the Jackson Manufacturing Company in Chattanooga, Tennessee until they moved to Cleveland, Tennessee.

Prior to the time Jackson and Alice acquired the stock of the Cleveland Chair Company, the business of that company had consisted of the manufacture of furniture. After Alice and Jackson acquired the stock of the Cleveland Chair Company, that company engaged in manufacturing upholstered furniture such as living room suites, chairs, and sofas, similar to the type of furniture manufactured by the partnership, Jackson Manufacturing Company. Each of these companies manufactured furniture in the low and medium price range.

In 1938 Jackson hired W. E. Wooten (hereinafter referred to as Wooten) who was then approximately 21 years old, to act as office manager at the Jackson Manufacturing Company. At that time a woman, now deceased, named Cavanaugh, was doing general office work in the offices of Jackson Manufacturing Company and was from time to time assisted by one or two other women employees. Wooten, with the assistance of the women in the office, kept the books of Jackson Manufacturing Company and assisted in buying materials.

After Jackson and Alice acquired the stock of the Cleveland Chair Company, the books of that company were kept in Chattanooga at the office of the Jackson Manufacturing Company and Wooten did work in connection with keeping those books. Wooten continued to work for Jackson Manufacturing Company and later for Jackson Manufacturing Company and the Cleveland Chair Company from the time he was employed in 1938 until sometime in April 1944 when he left to go into the United States Navy.

From the time Jackson and Alice acquired the stock of the Cleveland Chair Company, Jackson was its president and general manager and Alice was its vice president.

Wooten, as well as being office manager for the Cleveland Chair Company, was assistant secretary and treasurer for that company. The office in which Wooten worked and where the basic records of Jackson Manufacturing Company, and the Cleveland Chair Company were kept adjoined Jackson office, and there was a pigeonhole between the two so that Wooten might talk with Jackson without having to go into the adjoining office.

Mail of the Jackson Manufacturing Company was received at its office in Chattanooga, Tennessee, and Cleveland Chair Company mail which was received in Cleveland was transmitted to the Chattanooga office for handling. All of the mail and all other records of both businesses were at all times available to Jackson.

After acquiring the Cleveland Chair Company, Jackson spent a substantial portion of his time in Cleveland, Tennessee. Prior to moving to Cleveland, it was Jackson's general practice to go by the office in Chattanooga, Tennessee,

each morning and stay an hour or two, then go on to Cleveland, Tennessee, and return in the late afternoon and spend some time at the office or the plant of the Jackson Manufacturing Company in Chattanooga.

The bookkeeping work which was generally done by Cavanaugh, was payroll and billing work and entering of orders. The general supervisions of the bookkeeping was under Wooten who was responsible to and reported to Jackson.

Jackson was fully acquainted with the entire operations of the companies. He regularly checked the records and actively participated in every chase of the businesses including the manufacturing operations and the purchasing of materials. When Wooten left for the service in April 1944, Jackson personally ran the companies' offices until he hired another office manager in 1945.

The books and records of the partnership, Jackson Manufacturing Company, and of the corporation, Cleveland Chair Company, were kept on an accrual method of accounting.

Jackson and Alice each had a drawing account on the records of the partnership and payment of some of their personal expenses was made from these accounts.

The records of the Jackson Manufacturing Company and of the Cleveland Chair Company each contained an accounts receivable sheet for each company with which it did business. In the normal course of operations, when a shipment of furniture was made by either the partnership or the corporation, an invoice with a number of copies was made out to the company purchasing the furniture. These invoices were numbered in sequence with both duplicates bearing the same number as its original. One copy of the invoice would be sent to

the purchaser, another was placed in a file from which commissions for the plant manager and salesmen were figured, and another was placed in a file from which the accounts receivable ledger of the company was posted.

During the years 1942 through 1945 the office was considerably behind in posting the invoices to the accounts receivable ledger and at times the delay would be from 3 to 5 weeks. The unrecorded invoices were kept in the lower right-hand drawer of Jackson's desk in the Chattanooga office.

During the period 1942 through 1945 certain of the materials necessary in the manufacture of furniture became in short supply.

At sometime during 1942 a Government regulation prohibited the use of springs in the manufacture of upholstered furniture and Jackson Manufacturing Company and Cleveland Chair Company began to use a heavy duck to substitute for springs. This duck, as well as certain types of lumber used in the manufacture of furniture, could be legally obtained only in the amounts allocated by the Government regulatory agencies charged with such responsibility during the period of World War II.

Upholstery material, which from a cost standpoint constituted the major item of material needed in the manufacture of upholstered furniture, did not require a Government allocation in order that it might be purchased but the prices at which such material could be sold were controled by the Office of Price Administration (hereinafter referred to as OPA), and due to the general scarcity of civilian goods during the war years was not always readily available at the regulated OPA prices in the quantities and qualities that the Jackson

Manufacturing Company and the Cleveland Chair Company needed for use in their expanding businesses.

The OPA also controlled the prices at which furniture could be sold starting in approximately May 1942, and during the period 1942 through 1945 a scarcity existed in the supply of furniture which created a good demand for the products of the Jackson Manufacturing Company and Cleveland Chair Company. Both companies received payment on most of their accounts receivable during those years within 30 to 60 days and had very few bad debts.

In determining the prices at which furniture would be sold both Jackson Manufacturing Company and Cleveland Chair Company used a cost sheet for the basic cost of furniture with a variance depending on the upholstery material to be used on the furniture ranging to around 18 different grades. The prices of the furniture were determined from these cost sheets and although the base price was generally set by the OPA on the standard charged during the month of March 1942, the OPA permitted the price to vary depending upon the amount actually paid by a company for the upholstery material used. On a number of occasions during the years 1942 to 1945 the prices charged by Jackson Manufacturing Company and Cleveland Chair Company for the furniture they manufactured and sold were examined by representatives of the OPA.

During the years 1942, 1943, 1944, and 1945, certain invoices representing sales of merchandise which had been made by Jackson Manufacturing Company and Cleveland Chair Company were not recorded on the books and records of each of those companies from which the Federal tax returns were prepared. The checks received in payment of such invoices were likewise not posted to the books and records of

the Jackson Manufacturing Company and the Cleveland Chair Company from which the income tax returns were prepared.

The certified public accountant who was the auditor for Jackson Manufacturing Company and Cleveland Chair Company, having started to audit books for Jackson's businesses in the mid-1930's, was not informed at the time he made his audits of the books and prepared the workpapers from which the tax returns of the partnership and the corporation were prepared, that these sales had been omitted. The audits made by this accountant were not certified.

Jackson was aware that all of the sales made by the Jackson Manufacturing Company and Cleveland Chair Company during the years 1942 through 1945 were not recorded on the books of the respective companies.

All of the receipts from the sales which were recorded on the books of the Jackson Manufacturing Company and Cleveland Chair Company were deposited to the respective bank accounts of those companies so that the deposits in each company's bank account reconciled with the sales as shown on the books of that company.

In November 1951 respondent's agents who conducted the investigation which led to the deficiencies and additions to tax determined by respondent in the deficiency notices from which the petitions in these cases were filed contacted Jackson in his offices at the Jackson Manufacturing Company in Chattanooga, Tennessee. Jackson had been notified approximately a year prior to that time that he would be contacted with respect to this examination of his return.

Respondent had examined the partnership returns of the Jackson Manufacturing Company for the years 1941 through 1943 on a prior occasion. The examination for 1943 was a partial examination, checking certain specific items in the return. Respondent had previously examined the returns of

Cleveland Chair Company for the years 1942, 1943, 1944, 1945, and 1946. The examination for 1946 was a partial examination. The books and records used by the accountant who audited the Jackson Manufacturing Company's and Cleveland Chair Company's books, in preparing workpapers from which the returns were prepared were the books which were made available to respondent's agents in these original investigations. The investigating agents were not informed of any sales being omitted from the records used in their investigation.

At the time the agents who made the investigation which gave rise to the instant cases contacted Jackson in November 1951, Jackson did not furnish them with any books and records for either Jackson Manufacturing Company or Cleveland Chair Company for the years 1941 through 1946. At that time he advised respondent's agents that the records of both Jackson Manufacturing Company and Cleveland Chair Company for the years 1941 through 1946 had been thrown away or destroyed because they had become damaged by flood water. At that time Jackson did not furnish respondent's agents any personal checks, bank statements, or other personal records, but he did not state that such records had been subject to flood damage.

During the course of the investigation in November 1951 Jackson told respondent's agents that all of the transactions of Jackson Manufacturing Company and Cleveland Chair Company had been recorded on the records of the company, except where certain sales invoices had been left off of the sales records, and the checks in payment of these invoices had been cashed at the East Chattanooga Branch of the Hamilton National Bank to obtain funds to make purchases at Black Market premium prices. Jackson further stated to respondent's agents that his accountants did not know about the failure to record certain sales and the cashing of the checks. At

that time Jackson told the investigating agents that he had kept an extra set of records showing the sales which were not recorded on the regular books and records of Jackson Manufacturing Company and Cleveland Chair Company from which the respective tax returns had been prepared. Respondent's agents were not furnished at that time or at any later time with this extra set of records.

The following schedules show the dates, amounts, and disposition of the proceeds of checks representing payments of sales invoices to Jackson Manufacturing Company which were not deposited to the account of that company during the years 1942, 1943, 1944, and 1945:

Date	Amount	Deposited to Account of	Cashed but not deposited
1942			
June 18	$ 58.00		$ 58.00
June 24	1.18	John Jones	
September 9	174.18	John Jones	
September 9	7.92	John Jones	
October 28	60.00		60.00
October 28	2.77		2.77
Total	$ 303.05		$ 118.77
1943			
January 25	$ 14.20		$ 14.20
February 12	402.48	John Jones	
February 23	6.00	John Jones	
February 26	214.62		214.62
February 27	1,582.98	John Jones	
February 27	2,022.72	John Jones	
March 4	2,851.24	John Jones	
March 4	2,208.23	John Jones	
March 4	2,116.80	John Jones	
March 18	2,077.60	John Jones	
March 18	2,988.44	John Jones	
March 18	2.55	John Jones	
March 18	2,042.12	John Jones	
March 18	124.23	John Jones	
March 18	2,510.59	John Jones	
March 18	2,383.70	John Jones	
March 18	7.35		7.35
March 18	1.20		1.20
March 18	53.92		53.92
March 18	58.74		58.74
March 18	54.39		54.39
March 18	1.20		1.20
April 2	19.05	Jolly Jewell	
April 2	30.14	Jolly Jewell	
April 2	24.07	Jolly Jewell	
April 2	8.00	Jolly Jewell	
April 2	26.00	Jolly Jewell	
April 2	2,581.69	John Jones	
April 2	1,716.98	John Jones	
April 2	2,638.31	John Jones	
April 2	1,757.21	John Jones	
April 2	1,871.02	John Jones	

Date	Amount	Deposited to Account of	Cashed but not deposited
April 30	$ 207.04		$ 207.04
May 22	20.89	John Jones	
	25.94	John Jones	
	16.73	John Jones	
	33.71	John Jones	
	16.43	John Jones	
	13.98	John Jones	
	26.94	John Jones	
	14.74	John Jones	
	11.48	John Jones	
	132.70	John Jones	
July 1	18.66	John Jones	
July 19	2,199.12	John Jones	
July 19	3,782.02	John Jones	
July 19	3,012.72	John Jones	
July 19	2,240.28	John Jones	
July 19	4,045.64	John Jones	
July 19	1,549.54	John Jones	
July 19	1,787.52	John Jones	
July 19	3,669.47	John Jones	
July 19	34.24	John Jones	
July 20	4,104.14	John Jones	
July 20	3,549.46	John Jones	
August 27	364.38	W. E. Wooten	
	10.96	W. E. Wooten	
	40.91	W. E. Wooten	
	4,051.24	W. E. Wooten	
	3,744.32	W. E. Wooten	
	1,787.52	W. E. Wooten	
	3,933.13	W. E. Wooten	
	4,131.84	W. E. Wooten	
	3,840.82	W. E. Wooten	
	3,729.49	W. E. Wooten	
	3,283.02	W. E. Wooten	
	4,485.26	W. E. Wooten	
	1,575.84	W. E. Wooten	
August 30	1,787.52		1,787.52
September 13	3,696.60	John Jones	
September 13	4,151.67	John Jones	
September 13	2,759.68	John Jones	
September 13	3,724.20	John Jones	
September 13	38.40	John Jones	
September 13	4,100.12	John Jones	
September 13	4.61	John Jones	
September 13	42.35	Bertha Jewell	
September 21	9.50		9.50
November 23	4,251.24	W. E. Wooten	
November 23	4,308.03	W. E. Wooten	
November 23	1,850.73	W. E. Wooten	
November 23	6,414.84	W. E. Wooten	
November 23	3,426.08	W. E. Wooten	
December 15	3,792.13	Herbert Jewell	
December 15	227.13	Howard Johnson	
December 15	2,994.88	Howard Johnson	
December 15	4,258.53	Howard Johnson	
December 15	3,011.54	Howard Johnson	
December 15	4,710.78	Howard Johnson	
December 15	3,654.42	Howard Johnson	
December 15	3,189.31	Howard Johnson	
1943 Total	$166,398.04		$ 2,407.68

Date	Amount	Deposited to Account of	Cashed but not deposited
1944			
January 8	$ 896.19	John Jones	
January 31	3,777.63	Ralph Wooten	
	4,025.41	Ralph Wooten	
	1,858.08	Ralph Wooten	
	1,858.08	Ralph Wooten	
	4,465.85	Ralph Wooten	
	4,305.63	Ralph Wooten	
	3,189.31	Ralph Wooten	
	$ 3,868.85	Ralph Wooten	
	3,643.33	Ralph Wooten	
	4,982.71	Ralph Wooten	
May 26	3,766.85		$ 3,766.85
December 23	27.50		27.50
1944 Total	$ 40,675.02		$ 3,794.35
1945			
April 23	$ 1,561.51		$ 1,561.51
April 23	4,457.35		4,457.35
June 6	2,214.08		2,214.08
1945 Totals	$ 8,232.94		$ 8,232.94

The following schedules show the dates, amounts, and disposition of proceeds of checks representing payments of sales invoices to Cleveland Chair Company which were not deposited to the account of that company during the years 1942, 1943, 1944, and 1945:

Date	Amount	Deposited to Account of	Cashed but not deposited
1942			
July 2	$ 42.46	John Jones	
July 24	11.24	John Jones	
July 24	477.96	John Jones	
July 24	102.60	John Jones	
August 7	125.40	John Jones	
August 7	31.39	John Jones	
August 7	3.75	John Jones	
September 9	21.38	John Jones	
September 9	15.00	John Jones	
November 10	6.91	John Jones	
November 10	4.22	John Jones	
November 10	1.60	John Jones	
November 10	1,716.96	John Jones	
December 3	64.56	John Jones	
December 3	46.77	John Jones	
December 3	25.50	John Jones	
December 3	2.00	John Jones	
December 3	12.27	John Jones	
December 3	33.18	John Jones	
December 31	394.20	John Jones	
December 31	7.00	John Jones	
December 31	49.78	John Jones	
December 31	11.75	John Jones	
December 31	26.10	John Jones	
December 31	16.20	John Jones	
December 31	6.71	John Jones	
December 31	28.80	John Jones	
1942 Total	$ 3,285.69		
1943			
January 13	$ 22.00	John Jones	
January 25	74.70		$ 74.70
January 25	35.00		35.00
January 25	2.50		2.50
1943			
February 23	57.54	John Jones	
February 23	7.47	John Jones	
February 23	17.92	John Jones	
February 23	25.48	John Jones	
February 23	7.50	John Jones	
February 23	36.17	John Jones	
March 4	2,085.08	Jolly Jewell	
March 4	1,695.44	Jolly Jewell	
March 4	606.91	Jolly Jewell	
March 4	2,544.04	Jolly Jewell	

Date	Amount	Deposited to Account of	Cashed but not deposited
March 4	$ 854.17	Jolly Jewell	
March 4	786.28	Jolly Jewell	
March 4	1,649.26	Jolly Jewell	
March 4	379.84	Jolly Jewell	
March 4	371.95	Jolly Jewell	
March 18	1,562.90	Jolly Jewell	
March 18	2,065.84	Jolly Jewell	
March 18	13.59	Jolly Jewell	
March 18	7.99	Jolly Jewell	
March 18	425.32	Jolly Jewell	
March 18	363.04	Jolly Jewell	
March 18	361.04	Jolly Jewell	
March 18	2,355.72	John Jones	
April 26	21.76	Jolly Jewell	
May 22	4.60	John Jones	
July 1	17.00	John Jones	
July 19	180.00	Jolly Jewell	
July 19	19.98	Jolly Jewell	
July 19	2,395.16	Jolly Jewell	
July 19	3,581.32	Jolly Jewell	
July 19	3,774.96	Jolly Jewell	
July 19	3,998.40	Jolly Jewell	
July 19	3,892.56	Jolly Jewell	
July 19	2,314.09	Jolly Jewell	
July 19	2,293.20	Jolly Jewell	
July 27	15,041.57	Jolly Jewell	
August 27	2,132.39	Bertha Jewell	
August 27	3,955.28	Bertha Jewell	
August 27	3,998.40	Bertha Jewell	
August 27	3,015.66	Bertha Jewell	
August 27	25.49	Bertha Jewell	
August 27	3,998.40	Bertha Jewell	
August 27	3,916.95	Bertha Jewell	
1943			
August 27	2,010.96	Bertha Jewell	
August 27	4.50	Bertha Jewell	
August 27	3,755.56	Bertha Jewell	
August 27	3,758.10	Bertha Jewell	
August 27	2,757.96	Bertha Jewell	
September 13	3,814.00	Bertha Jewell	
September 13	3,860.22	Bertha Jewell	
September 13	33.96		$ 33.96
September 13	23.20		23.20
October 26	30.00	Howard Johnson	
October 26	314.50	Howard Johnson	
October 26	3,956.53	Howard Johnson	
October 26	2,847.17	Howard Johnson	
October 26	3,943.52	Howard Johnson	
October 26	3,988.60	Howard Johnson	
October 26	2,504.10	Howard Johnson	
October 26	3,072.10	Howard Johnson	
October 26	99.47	Howard Johnson	
November 24	3,073.28	Jolly Jewell	
November 24	3,998.40	Jolly Jewell	
November 24	3,998.40	Jolly Jewell	
November 24	3,998.40	Jolly Jewell	
November 24	3,998.40	Jolly Jewell	
November 24	3,049.02	Jolly Jewell	
December 15	3,810.40	Herbert Jewell	
December 15	3,796.87	Herbert Jewell	
December 15	3,880.80	Herbert Jewell	
December 15	3,998.40	Herbert Jewell	
December 15	2,234.40	Herbert Jewell	
December 15	3,891.38	Herbert Jewell	

Date	Amount	Deposited to Account of	Cashed but not deposited
December 15	6,820.33	Herbert Jewell	
December 15	9,607.28	Herbert Jewell	
December 15	5,319.52	Herbert Jewell	
December 15	2,010.96	Herbert Jewell	
December 15	19.65	Herbert Jewell	
December 15	1.86	Herbert Jewell	
December 15	$ 3,073.28	Herbert Jewell	
December 15	3,881.90	Herbert Jewell	
December 15	3,781.04	Herbert Jewell	
December 15	3,073.28	Herbert Jewell	
December 15	3,073.28	Herbert Jewell	
1943 Total	$202,116.82		$ 189.36
1944			
January 8	$ 2,283.01	Jolly Jewell	
January 8	3,901.73	Jolly Jewell	
January 8	2,895.12	Jolly Jewell	
January 8	6,379.21	Jolly Jewell	
January 8	7,505.78	Jolly Jewell	
January 8	3,880.80	Jolly Jewell	
January 8	2,162.66	Jolly Jewell	
January 8	3,909.12	Jolly Jewell	
March 15	38.60		$ 38.60
March 18	38.60		38.60
March 18	32.00		32.00
March 18	60.34		60.34
May 1	13.50		13.50
May 26	18.00		18.00
September 12	4,458.62		4,458.62
1944 Totals	$ 37,577.09		$ 4,659.66
1945			
February 5	$ 40.92		$ 40.92
April 23	1,485.88		1,485.88
April 23	2,015.38		2,015.38
June 6	450.00		450.00
June 6	1,835.68		1,835.68
July 23	412.80		412.80
July 23	68.20		68.20
September 6	2,872.77		2,872.77
September 14	195.65		195.65
September 14	985.62		985.62
September 14	1,306.33		1,306.33
October 12	40.63		40.63
1945 Total	$ 11,689.86		$11,689.86

All of the checks set forth in the two preceding schedules were drawn on out-of-town banks and were listed on transit letters going from the East Chattanooga Branch of the Hamilton National Bank to the main branch. Some of these checks which were not deposited to the accounts of Jackson Manufacturing Company and Cleveland Chair Company cleared on days when deposits had been made to the accounts of these businesses at the East Chattanooga Branch of the Hamilton National Bank and some cleared on days when no such deposits were made.

The accounts at the East Chattanooga Branch of Hamilton National Bank in the names of Jolly Jewell, Herbert Jewell, Bertha Jewell, John Jones, Howard Johnson, Ralph Wooten, Roe Isbill, Jim Jolly, W. E. Wooten and W. R. Jackson Thomas Rogers, Samuel Jackson, Melvin Lee, and W. E. Wooten to which these checks were deposited were savings accounts. The name "Jewell" is Alice's maiden name. Alice had a sister whose name was Jolly Jewell. Jackson had a brother named Melvin Lee Jackson. The Jacksons had a son named Roger Thomas Jackson. When the schedules of the out-of-town checks of the Jackson Manufacturing Company and Cleveland Chair Company which were not deposited to the accounts of those businesses were prepared, there were many of the transit letters of the East Chattanooga Branch of the Hamilton National Bank which were not made available to the agents of respondent who prepared the schedules because they could not be located by the officials of the bank so that if any checks of either Jackson Manufacturing Company or Cleveland Chair Company were listed on such transit letters they are not included in the schedules heretofore set forth. The

East Chattanooga Branch of the Hamilton National Bank did not keep records of the local Chattanooga checks cashed by it and therefore if any such checks of either Jackson Manufacturing Company or Cleveland Chair Company were not deposited to the respective accounts of those businesses, the bank records would not show any detail of such checks. Some but not all of the deposit slips for the various savings accounts to which checks of the Jackson Manufacturing Company and Cleveland Chair Company were deposited were placed in evidence at the trial. These deposit slips were in the handwriting of E. C. Dodd, the then manager of the East Chattanooga Branch of the Hamilton National Bank. The balance of such deposit slips could not be located by the officials of that bank. It is not uncommon for a bank employee or official to prepare a deposit slip for a client of the bank.

The following schedule shows the deposits, withdrawals, and balances in the account at the East Chattanooga Branch of the Hamilton National Bank entitled "Jolly Jewell" with a notation as to the source of the deposits:

Date	Deposit	Withdrawal	Balance	Source of Deposit
1943				
Mar. 4	[illegible]	.....	$ [illegible]	Checks endorsed by Cleveland Chair Co.
Mar. 18	[illegible]	.....	[illegible]	Unidentified
Mar. 18	[illegible]	.....	[illegible]	Checks endorsed by Cleveland Chair Co.
Apr. 3	[illegible]	.....	[illegible]	[illegible] unidentified; bal. checks cashed by W. R. Jackson
Apr. 26	[illegible]	.....	[illegible]	[illegible] check endorsed by W. R. Jackson; [illegible] check endorsed by Cleveland Chair Co.; balance unidentified
May 5	[illegible]	.....	[illegible]	Unidentified
May 28	[illegible]	.....	[illegible]	Unidentified
July 1	[illegible]	.....	[illegible]	Interest credit
July 19	[illegible]	.....	[illegible]	[illegible] unidentified; balance checks endorsed by Cleveland Chair Co.
July 20	.....	$ [illegible]	[illegible]	
July 27	[illegible]	.....	[illegible]	[illegible] checks endorsed by Cleveland Chair Co.; balance unidentified
Nov. 24	[illegible]	.....	[illegible]	Checks endorsed by Cleveland Chair Co.
1944				
Jan. 1	[illegible]	.....	[illegible]	Interest credit
Jan. 8	[illegible]	.....	[illegible]	Checks endorsed by Cleveland Chair Co.
Apr. 1	.....	[illegible]	[illegible]	
Apr. 3	.....	[illegible]	[illegible]	
July 1	[illegible]	.....	[illegible]	Interest credit
July 3	.....	[illegible]	—0—	

The following schedule shows the deposits, withdrawals, and balances in the account at the East Chattanooga Branch of the Hamilton National Bank entitled "Herbert Jewell" with a notation as to the source of the deposits:

Date	Deposit	Withdrawal	Balance	Source of Deposit
1943				
Dec. 15	$88,686.38	.....	$ 88,686.38	$8,782.13 checks endorsed by Jenkins Mfg. Co.; balance checks endorsed by Cleveland Chair Co.
1944				
Apr. 6	.....	$ 20,000.00	68,686.38	
Apr. 20	.....	10,000.00	58,686.38	
July 1	288.38	.....	58,984.88	Interest credit
Sept. 12	.....	12,000.00	11,284.88	
Sept. 22	.....	200.00	10,784.88	
Sept. 27	.....	1,500.00	9,284.88	
1945				
Jan. 1	48.45	.....	9,333.33	Interest credit
July 1	48.78	.....	9,382.71	Interest credit
1946				
Jan. 1	48.95	.....	9,431.66	Interest credit
Apr. 10	.....	9,431.66	—0—	

The following schedule shows the deposits, withdrawals, and balances in the account at the East Chattanooga Branch of the Hamilton National Bank entitled "Bertha Jewell" with a notation as to the source of the deposits.

Date	Deposit	Withdrawal	Balance	Source of Deposit
1943				
July 20	$ 9,782.88	.....	.....	Transferred from Jolly Jewell account
Aug. 27	28,282.68	.....	.....	Checks endorsed by Cleveland Chair Co.
Sept. 13	7,716.87	.....	.....	$42.38 check endorsed by Jenkins Mfg. Co.; balance, checks endorsed by Cleveland Chair Co.
Oct. 28	28,282.67	.....	.....	Checks endorsed by Jenkins Mfg. Co.

The following schedule shows the deposits, withdrawals, and balances in the account at the East Chattanooga Branch of the Hamilton National Bank entitled "John Jones" with a notation as to the source of the deposits:

Date	Deposit	Withdrawal	Balance	Source of Deposit
1942				
June 17	$ 5,705.69	.....	$ 5,705.69	$5,530.65 transferred from Weston & Jackson account. Balance unidentified
July 3	49.75	.....	5,757.75	Unidentified
July 9	172.19	.....	5,929.94	$68.73 check endorsed by Jackson Mfg. Co.; $42.65 check endorsed by Cleveland Chair Co.; balance unidentified
July 8	42.80	.....	5,972.94	Unidentified
July 13	1,777.71	.....	7,750.65	Unidentified
July 23	178.61	.....	7,929.26	Unidentified
July 24	806.48	.....	8,734.74	$1.50 unidentified; $1.12 check endorsed by Jackson Mfg. Co.; balance check endorsed by Cleveland Chair Co.
Aug. 7	276.84	.....	9,011.58	$46.00 unidentified; balance checks endorsed by Cleveland Chair Co.
Aug. 17	96.68	.....	9,107.26	Unidentified
Sept. 2	284.57	.....	9,392.83	Unidentified
Sept. 4	29.34	.....	9,422.17	Unidentified
Sept. 9	207.88	.....	9,630.05	$22.49 unidentified; $59.20 checks endorsed by Cleveland Chair Co.; $174.19 checks endorsed by Jackson Mfg. Co.; $29.80 check endorsed by W. R. Jackson
Sept. 28	412.89	.....	10,074.45	Unidentified
Oct. 13	2,127.84	.....	12,202.49	Unidentified
Oct. 15	105.60	.....	12,308.49	Unidentified
Nov. 10	2,888.69	.....	15,195.18	$1,659.69 unidentified; balance checks endorsed by Cleveland Chair Co.
Nov. 24	1,659.97	.....	17,445.15	Unidentified
Dec. 3	2,282.96	.....	19,728.11	$2,074.45 unidentified; $25.41 checks endorsed by W. R. Jackson; balance checks endorsed by Cleveland Chair Co.
Dec. 14	722.45	.....	20,454.59	Unidentified
Dec. 14	685.15	.....	21,139.74	Unidentified
Dec. 28	293.60	.....	21,433.74	Unidentified
Dec. 31	2,152.85	.....	23,586.59	$1,808.44 unidentified; $22.80 check endorsed by W. R. Jackson; bal. checks endorsed by Cleveland Chair Co.
1943				
Jan. 1	48.19	.....	23,634.78	Interest credit
Jan. 9	.....	$ 22,699.60	942.68	
Jan. 13	204.10	.....	946.78	$22.80 check endorsed by Cleveland Chair Co.; balance unidentified

Date	Deposit	Withdrawal	Balance	Source of Deposit
Jan. 13	$23,977.00	.....	$ 28,972.15	Redeposit of funds withdrawn for short-term bonds
Feb. 13	1,488.01	.....	28,438.16	$800.48 check endorsed by Ray Jackson; $402.43 check endorsed by Jackson Mfg. Co.; balance unidentified
Feb. 23	782.89	.....	28,208.05	$313.48 unidentified; $1.00 check endorsed by Jackson Mfg. Co.; $282.25 checks endorsed by W. R. Jackson; balance endorsed by Cleveland Chair Co.
Feb. 27	5,498.15	.....	31,685.20	$1,870.47 unidentified; balance checks endorsed by Jackson Mfg. Co.
Mar. 4	2,176.37	.....	33,861.57	Checks endorsed by Jackson Mfg. Co.
Mar. 13	5,000.00	.....	43,841.57	Unidentified
Mar. 15	454.34	.....	44,295.91	$18.34 check endorsed by W. R. Jackson; balance unidentified
Mar. 18	14,634.95	.....	58,930.86	$2,355.72 check endorsed by Cleveland Chair Co.; balance checks endorsed by Jackson Mfg. Co.
Apr. 2	11,661.27	.....	70,572.13	$1,096.08 unidentified; balance checks endorsed by Jackson Mfg. Co.
Apr. 12	5,000.00	.....	75,572.13	Unidentified
Apr. 26	1,095.00	.....	76,667.13	Unidentified
May 8	350.00	.....	77,017.13	Unidentified
May 10	1,500.00	.....	78,517.13	Unidentified
May 12	3,378.39	.....	81,895.52	Unidentified
May 22	979.86	.....	82,875.38	$981.72 unidentified; $1.00 check endorsed by Cleveland Chair Co.; balance checks endorsed by Jackson Mfg. Co.
June 3	4,100.00	.....	86,975.38	Unidentified
July 1	230.00	.....	87,205.38	Interest credit
July 1	1,881.05	.....	89,086.43	$1,750.98 unidentified; $17.60 check endorsed by Cleveland Chair Co.; $12.06 check endorsed by Jackson Mfg. Co.; balance checks endorsed by W. R. Jackson
July 19	24,578.04	.....	113,614.47	$2,207.40 unidentified; balance checks endorsed by Jackson Mfg. Co.
July 20	7,693.60	.....	121,308.07	Checks endorsed by Jackson Mfg. Co.
July 20	.....	$ 91,308.07	30,000.00	
Aug. 12	.....	2,000.00	28,000.00	
Sept. 13	12,477.38	.....	40,477.38	Checks endorsed by Jackson Mfg. Co.
Oct. 4	.....	2,000.00	44,477.38	
Nov. 28	.....	20,000.00	24,477.38	
1944				
Jan. 1	139.80	.....	24,622.08	Interest credit
Jan. 8	8,516.52	.....	33,134.60	$7,620.33 unidentified; balance checks endorsed by Jackson Mfg. Co.
July 1	165.50	.....	33,300.10	Interest credit
1945				
Jan. 1	133.45	.....	33,433.55	Interest credit
Feb. 8	.....	10,000.00	23,433.55	
July 1	117.35	.....	23,573.90	Interest credit
July 13	1,000.00	.....	24,573.90	Unidentified (apparently error in posting)
1946				
Jan. 1	117.80	.....	24,691.80	Interest credit
Jan. 9	.....	24,000.00	691.80	
Jan. 13	23,978.00	1,000.00	23,697.80	Redeposit of funds withdrawn for short-term bonds.
		120.80	23,576.80	
July 1	117.80	.....	23,694.60	Interest credit

Date	Deposit	Withdrawal	Balance	Source of Deposit
1937				
Jan. 1	$ 130.55	.....	$ 22,772.78	Interest credit
Jan. 9	.....	$ 22,500.00	272.78	
Jan. 15	22,470.00	.....	22,742.78	Redeposit of funds withdrawn for short-term bonds.
July 1	132.75	.....	22,875.53	Interest credit
Nov. 8	.....	8,000.00	14,875.53	
Nov. 24	8,122.00	.....	22,997.53	Unidentified (apparently error in posting)
1938				
Jan. 1	132.20	.....	23,129.73	Interest credit
Jan. 9	.....	22,500.00	629.73	
Jan. 15	22,470.00	.....	23,099.73	Redeposit of funds withdrawn for short-term bonds.
July 1	132.00	.....	23,231.73	Interest credit
1939				
Jan. 1	132.00	.....	23,363.73	Interest credit
July 1	131.80	.....	23,495.53	Interest credit
July 21	.....	5,000.00	18,495.53	
July 22	.....	10,000.00	8,495.53	
July 25	.....	5,000.00	4,495.53	
July 29	.....	4,000.00	495.53	
July 30	.....	495.53	—0—	

The following schedule shows the deposits, withdrawals, and balances in the account at the East Chattanooga Branch of the Hamilton National Bank entitled, "Howard Johnson" with a notation as to the source of the deposits:

Date	Deposit	Withdrawal	Balance	Source of Deposit
1943				
July 20	$16,322.07	.....	$ 16,322.07	Transfer from John Jones account
Oct. 28	22,225.03	.....	38,497.10	($5,422.04 unidentified; balance checks endorsed by Cleveland Chair Co.
Nov. 23	.....	$ 30,000.00	8,497.10	
Dec. 15	22,942.89	.....	31,339.99	Checks endorsed by Jackson Mfg. Co.
1944				
Jan. 1	22.70	.....	31,362.69	Interest credit
July 1	197.00	.....	31,713.69	Interest credit
Oct. 17	.....	20,000.00	11,713.69	
1945				
Jan. 1	102.00	.....	11,815.69	Interest credit
July 1	69.10	.....	11,884.79	Interest credit
1946				
Jan. 1	69.40	.....	11,954.19	Interest credit
Jan. 9	.....	11,000.00	943.89	
Jan. 15	10,000.00	.....	11,943.89	Redeposit of funds withdrawn for short-term bonds
July 1	69.64	.....	11,993.53	Interest credit
1947				
Jan. 1	69.65	.....	12,063.18	Interest credit
Jan. 9	.....	22,000.00	63.18	
Jan. 15	11,992.00	.....	12,057.18	Redeposit of funds withdrawn for short-term bonds
July 1	60.10	.....	12,097.78	Interest credit
1948				
Jan. 1	60.65	.....	12,158.43	Interest credit
Jan. 9	.....	22,000.00	158.43	
Jan. 15	11,992.00	.....	12,150.43	Redeposit of funds withdrawn for short-term bonds
July 1	60.70	.....	12,211.13	Interest credit
1949				
Jan. 1	61.05	.....	12,272.18	Interest credit
July 1	61.10	.....	12,333.28	Interest credit
July 21	.....	5,000.00	7,333.28	
July 22	.....	5,000.00	1,333.28	
July 30	.....	1,333.28	—0—	

The following schedule shows the deposits and balances in an account at the East Chattanooga Branch of the Hamilton National Bank entitled, "W. E. Wooten" with a notation as to the source of the deposits:

Date	Deposit	Balance	Source of deposit
1943			
Aug. 27	$80,172.72	$80,172.72	$25,000.00 transferred from Thomas Rogers account; balance checks endorsed by Jackson Mfg. Co.
Nov. 29	20,220.72	80,422.45	Checks endorsed by Jackson Mfg. Co.

On January 31, 1944, checks in the amount of $35,984.48, endorsed by the Jackson Manufacturing Company, were deposited to an account at the East Chattanooga Branch of the Hamilton National Bank entitled, "Ralph Wooten."

The following schedule shows the deposits, withdrawals, and balances in an account at the East Chattanooga Branch of the Hamilton National Bank entitled, "Roe Isbill" with a notation as to the source of the deposits:

Date	Deposit	Withdrawal	Balance	Source of Deposit
1944				
Sept. 15	$12,000.00	.....	$ 12,000.00	Apparently transferred from Herbert Jowell account
Dec. 11	.....	$ 10,298.13	1,701.87	
1945				
Jan. 1	4.25	.....	1,706.12	Interest credit
July 1	8.50	.....	1,714.62	Interest credit
1946				
Jan. 1	8.55	.....	1,723.17	Interest credit
Apr. 10	.....	1,723.17	—0—	

The following schedule shows the deposits, withdrawals, and balances in an account at the East Chattanooga Branch of the Hamilton National Bank entitled, "Jim Jolly" with a notation as to the source of the deposits:

Date	Deposit	Withdrawal	Balance	Source of Deposit
1944				
Sept. 15	$12,000.00	.....	$ 12,000.00	Unidentified
Oct. 19	.....	$ 2,770.19	9,229.81	
1945				
Jan. 1	24.30	.....	9,254.11	Interest credit
July 1	42.75	.....	9,296.86	Interest credit
July 17	.....	4,000.00	5,296.86	
1946				
Jan. 1	23.50	.....	5,320.36	Interest credit
Apr. 10	.....	5,320.36	—0—	

The following schedule shows the deposits, withdrawals, and balances in the account at the East Chattanooga Branch of the Hamilton National Bank entitled, "W. E. Wooten and W. R. Jackson" with a notation as to the source of the deposits:

Date	Deposit	Withdrawal	Balance	Source of Deposit
1943				
Mar. 25	$ 107.25	.....	$ 107.25	Unidentified
Mar. 27	71.01	.....	178.26	Unidentified
Apr. 6	207.50	.....	385.76	Unidentified
Apr. 19	121.44	.....	507.20	Unidentified
Apr. 23	221.20	.....	728.40	Unidentified
Apr. 27	202.00	.....	1,030.40	Unidentified
May 5	268.04	.....	1,298.37	Unidentified

Date	Deposit	Withdrawal	Balance	Source of Deposit
May 21	$ 372.04	.....	$ 1,827.41	Unidentified
May 28	196.30	.....	1,733.71	Unidentified
June 5	859.94	.....	2,293.65	Unidentified
June 10	3,246.00	.....	5,539.65	Unidentified
June 17	.....	$ 5,539.65	—0—	Check endorsed by W. R. Jackson

The following schedule shows the deposits, withdrawals, and balances in the account at the East Chattanooga Branch of the Hamilton National Bank entitled, "Thomas Rogers" with a notation as to the source of the deposits:

Date	Deposit	Withdrawal	Balance	Source of Deposit
1943				
July 20	$25,000.00	.....	$ 25,000.00	Transferred from the John Jones account
Aug. 27	.....	$ 25,000.00	—0—	

The following schedule shows the deposits, withdrawals, and balances in the account at the East Chattanooga Branch of the Hamilton National Bank entitled, "Samuel Jackson" with a notation as to the source of the deposits:

Date	Deposit	Withdrawal	Balance	Source of Deposit
1943				
July 20	$25,000.00	.....	$ 25,000.00	Transferred from the John Jones account
Aug. 27	.....	$ 25,000.00	—0—	

The following schedule shows the deposits, withdrawals, and balances in the account at the East Chattanooga Branch of the Hamilton National Bank entitled, "Melvin Lee" with a notation as to the source of the deposits:

Date	Deposit	Withdrawal	Balance	Source of Deposit
1943				
July 20	$25,000.00	.....	$ 25,000.00	Transferred from the John Jones account
Aug. 27	.....	$ 25,000.00	—0—	

The following schedule shows the clearing date, amount, last endorsement, and disposition of proceeds of certain checks endorsed by W. R. Jackson, Ray Jackson, and Lee Jackson which were cashed at the East Chattanooga Branch of the Hamilton National Bank during the years 1942, 1943, 1944, and 1945.

Clearing Date	Amount	Last Endorsement By	Deposited to Account of	Cashed But Not Deposited
1942				
June 10	$3,246.00	W. R. Jackson	Wooten and Jackson	
September 9	23.00	W. R. Jackson	John Jones	
December 3	3.37	W. R. Jackson	John Jones	
December 3	18.88	W. R. Jackson	John Jones	
December 3	33.13	W. R. Jackson	John Jones	
December 21	28.80	W. R. Jackson	John Jones	
Total	$3,353.21			
1943				
January 25	$ 7.22	Lee Jackson [1]		$ 7.22
February 12	1,422.01	Ray Jackson [2]	John Jones	
February 23	202.35	W. R. Jackson	John Jones	
March 16	18.24	W. R. Jackson	John Jones	
April 2	19.05	W. R. Jackson	Jolly Jewell	

[1] Lee Jackson is a brother of W. R. Jackson and was the superintendent of the Jackson Manufacturing Company's factory during the years here involved.

[2] W. R. Jackson was sometimes called Ray Jackson.

Clearing Date	Amount	Last Endorsement By	Deposited to Account of	Cashed But Not Deposited
1943				
April 2	$ 30.14	W. R. Jackson	Jolly Jewell	
April 2	24.07	W. R. Jackson	Jolly Jewell	
April 2	8.00	W. R. Jackson	Jolly Jewell	
April 2	26.00	W. R. Jackson	Jolly Jewell	
April 26	125.00	W. R. Jackson	Jolly Jewell	
July 1	20.04	W. R. Jackson	John Jones	
July 1	24.42	W. R. Jackson	John Jones	
July 20	200.00	W. R. Jackson		$ 200.00
September 21	4.61	W. R. Jackson		4.61
September 21	38.40	W. R. Jackson		38.40
Total	$2,281.35			$ 250.93
1944				
February 25	$1,993.79	W. R. Jackson		$1,993.79
April 17	13.50	Ray Jackson		13.50
Total	$2,007.29			$2,007.29
1945				
March 7	$ 49.75	Ray Jackson		$ 49.75
April 23	38.45	Ray Jackson		38.45
April 23	30.68	W. R. Jackson		30.68
Total	$ 118.88			$ 118.88

All of the checks which have been identified as those of Jackson Manufacturing Company or Cleveland Chair Company in explaining the deposits to the various accounts under the names of Jolly Jewell, Herbert Jewell, Bertha Jewell, John Jones, and the other names as heretofore ser forth, were checks issued by the purchaser of products of Jackson Manufacturing Company or Cleveland Chair Company in payment for products shipped by the respective company to such purchasers.

Both Jackson and Alice had personal checking accounts at the East Chattanooga Branch of the Hamilton National Bank, separate and apart from the account of the Jackson Manufacturing Company, and Alice also had a savings account at the East Chattanooga Branch of the Hamilton National Bank. Jackson also had a checking account for approximately a 6-month period during 1943 at the East Chattanooga Branch of the Hamilton National Bank entitled, "W. R. Jackson Special Account."

On August 12, 1943, a $2,000 deposit was made to the W. R. Jackson special checking account at the East Chattanooga Branch of the Hamilton National Bank with funds withdrawn on the same date from the account entitled, "John Jones."

On October 4, 1943, a $2,000 deposit was made to the W. R. Jackson special checking account at the East Chattanooga Branch of the Hamilton National Bank with funds withdrawn on the same date from the account entitled, "John Jones."

On November 26, 1943, a $50,000 deposit was made to W. R. Jackson's checking account at the East Chattanooga Branch of the Hamilton National Bank. The funds for this deposit consisted of $20,000 withdrawn on the same date as the

deposit was made from the account entitled, "John Jones" and $30,000 withdrawn on the same date from the account entitled, "Howard Johnson."

On November 26, 1943, Jackson and Alice purchased a farm for the amount of $42,500 and some adjacent land for $7,500. The check for these purchases was drawn on W. R. Jackson's checking account at the East Chattanooga Branch of the Hamilton National Bank.

On or about November 30, 1944, Jackson purchased from the Jack M. Bass Company at a cost of $10, 298.13 certain 2¾ percent Roane County refunding bonds. In payment for the bonds Jack M. Bass Company drew a $10,298.13 sight draft on the Merchants Bank at Cleveland, Tennessee. The sight draft was paid by cashier's check number 12628 in the amount of $10,298.13 issued by the East Chattanooga Branch of the Hamilton National Bank to the Merchants Bank on December 5, 1944. The funds to cover the cashier's check so issued were withdrawn from the Roe Isbill account.

On April 1, 1944, a $100,000 deposit was made to the account of Cleveland Chair Company at the East Chattanooga Branch of the Hamilton National Bank. This deposit consisted of a transfer of $100,000 from the Jolly Jewell account on the same day the deposit was made. As a result of the deposit of $100,000 to the Cleveland Chair Company's account, Jackson and Alice were issued additional stock of the Cleveland Chair Company in the amount of $100,000.

On February 13, 1945, W. R. Jackson opened a personal account in his name at the Sears Community State Bank, Chicago, Illinois. The initial deposit was in the amount of $10,000 and was represented by cashier's check number 12755 issued by the East Chattanooga Branch of the Hamilton National Bank, Chattanooga, Tennes-

see, on February 8, 1945, payable to the Sears Community State Bank. The funds for the payment of the cashier's check were withdrawn on February 8, 1945, from the account entitled, "John Jones."

There were no other deposits or credits to, or withdrawals from, the personal account of W. R. Jackson at the Sears Community State Bank from the date that it was opened until it was closed on April 18, 1952, at Jackson's request. The bank issued cashier's check number 87062 in the amount of $10,000, dated April 18, 1952, payable to Jackson in order to close the account. This cashier's check had not been presented for payment and was still outstanding on January 10, 1962.

On May 3, 1944, Jackson opened a savings account at the Exchange Bank of St. Augustine, St. Augustine, Florida, with a deposit of $50,000. Of this deposit $40,000 consisted of proceeds of a loan and $10,000 represented that portion of a $10,300 cashier's check issued by the East Chattanooga Branch of the Hamilton National Bank on May 1, 1944, payable to the Exchange Bank of St. Augustine. The remaining $300 of this cashier's check was used to pay the interest for 90 days in advance on the $40,000 loan.

The amount of $10,000 had been withdrawn from the Herbert Jewell account on April 29, 1944. Jackson pledged the $40,000 savings account as collateral for the loan of $40,000 from the St. Augustine Bank and did not withdraw this amount until August 9, 1944, when he drew a $40,000 check on this savings account payable to the Exchange Bank of St. Augustine to pay the $40,000 note which became due on August 3, 1944.

On October 16, 1945, Jackson withdrew $10,083.33 from his savings account number 6829 at the Exchange Bank of St. Augustine by check dated October 1, 1945, payable to the Rome Bank and Trust Company, Rome Georgia, which amount was used to open a savings account in Jackson's name at the Rome Bank and Trust Company, Rome, Georgia.

During the years 1944, 1945, and 1946, the Exchange Bank of St. Augustine credited interest to the savings account in Jackson's name in the amounts of $83.33, $100.97, and $1.00, respectively.

The account in the Rome Bank and Trust Company, Rome, Georgia, opened in Jackson's name on October 16, 1945, was closed on March 16, 1950. During the time the account was in existence interest was credited thereto in the following amounts:

Date	Amount
December 28, 1945	$25.31
June 27, 1946	50.54
December 31, 1946	50.79
June 30, 1947	51.04
December 31, 1947	51.30
June 30, 1948	51.56
December 31, 1948	51.81
June 30, 1949	52.07
December 31, 1949	52.33

Alice received the following amounts as interest on a savings account in her name at the East Chattanooga Branch of the Hamilton National Bank:

Date	Amount
January 1, 1942	$7.15
July 1, 1942	20.15
January 1, 1943	14.30
July 1, 1943	35.50
January 1, 1944	49.00
July 1, 1944	50.15

Jackson recrived $12.90 interest on a savings account at the East Chattanooga Branch of the Hamilton National Bank as of January 1, 1942.

After the entry of the United States into World War II in late 1941, and particularly after the price regulations of OPA became applicable to materials Jackson Manufacturing Company and Cleveland Chair Company were purchasing in

approximately May 1942, the two companies experienced increasing difficulty in obtaining sufficient materials to manufacture the amount of furniture which they were able to sell. Jackson and Wooten discussed this increasing difficulty and came to the conclusion that they would purchase certain scarce material on the "Black Market" for cash.

The major item which Jackson Manufacturing Company and Cleveland Chair Company and difficulty in obtaining was upholstery material. There was also some difficulty in obtaining lumber. In the case of lumber, Jackson Manufacturing Company and Cleveland Chair Company sometimes were able to obtain lumber from suppliers withour cash payments, but on regular invoices paid by company check by having the lumber invoiced at a higher grade than the lumber was actually shipped. Thus, the supplier would obtain for the lower grade of lumber the price applicable to the higher grade, but the transaction would appear as a regular transaction for the higher grade of lumber on Jackson Manufacturing Company's or Cleveland Chair Company's books of account.

When purchases for Jackson Manufacturing Company and Cleveland Chair Company on the Black Market were first made for cash, the cash to purchase the items was obtained by cashing checks on the company's bank account and purchasing the items with the cash thus obtained. The accountant who audited the books of Jackson Manufacturing Company and Cleveland Chair Company suggested to Jackson that the respective companies stop the practice of writing checks to cash. Jackson and Wooten then discussed the method of obtaining the cash for purchases without drawing cash from the regular company bank accounts so that the withdrawal would

show on the company records. It was decided that certain checks which would be received by Jackson Manufacturing Company and Cleveland Chair Company in payment for merchandise would be cashed and the sales represented by these checks would not be entered on the accounts receivable ledger or in the gross sales of the respective company. In order that the girls posting the books in the office would not question the transactions, it was decided that when checks came in for invoices which had not yet been posted to the accounts receivable ledger but were in the bottom drawer of Jackson's desk at the Chattanooga office, the invoices that the check was in payment of would be pulled out of the stack of unposted invoices from which the girls posted and would never be posted to the accounts receivable ledger.

Jackson decided that Wooten should be able to cash some of the customers' checks which were made payable to Jackson Manufacturing Company or Cleveland Chair Company without such checks being deposited in the regular accounts of the two companies. Jackson therefore arranged with E. C. Dodd (hereinafter referred to as Dodd) who was manager of the East Chattanooga Branch of the Hamilton National Bank at Chattanooga, Tennessee, for Wooten to be permitted to cash checks drawn to Jackson Manufacturing Company and Cleve-Chair Company and to receive the proceeds in cash. These checks would have the regular company endorsement thereon.

When Wooten cashed checks in this manner, he would attempt to take checks that would total exactly the amount he would need to make the contemplated cash purchases. On certain occasions in anticipation of needing cash, he would take checks to the bank a day or two ahead of the date of the contemplated purchases and ask Dodd to hold the cash for a day or two until he called for it. The Black Market purchases

made by Wooten in this manner never exceeded $25,000 at any one time, and the total amount spent in this manner by Wooten from the time he began to make purchases in this manner in late 1942 until the first of April 1944, when he went into the United States Navy, for the combined Black Market purchases for Jackson Manufacturing Company and Cleveland Chair Company was between $75,000 and $100,000.

When the total checks which Wooten pulled would be more than the amount he paid for the materials purchased on the Black Market, he would take the remaining cash and purchase drapery material to use for upholstery material, or upholstery material at the regular department stores in Chattanooga, such as J. C. Penny. The materials purchased in this manner were legitimate purchases at the regular OPA prices at the department stores and would vary from very small amounts on certain occasions to as much as $400 for such material on other occasions.

The accountant who audited the books of Jackson Manufacturing Company and Cleveland Chair Company was not informed of the amounts which were not posted to the accounts receivable ledgers or included in gross sales, or that cash was received for checks representing such sales and used for purchases at Black Market prices.

Wooten would regularly give Jackson an accounting of the company checks which he had cashed and the items for which the cash had been expended with some form of receipt from the person to whom the payment had been made. When Wooten entered the military service around the first of April 1944, he advised Jackson that all amounts of cash that he had obtained had been properly accounted for.

Shortly after Wooten went into the military service, a customer billed by either Jackson Manufacturing Company or Cleveland Chair Company with a follow-up invoice informed Jackson that such invoice had been previously paid. Jackson immediately called in the companies' accountant to check the accounts receivable ledgers of the two companies to determine whether there were inaccuracies therein. Jackson wrote a letter to Wooten which Wooten interpreted to suggest that he might have taken for his own use cash from checks received in payment for goods by the companies. The accountant circularized the accounts receivable as shown on the books of the Jackson Manufacturing Company and the Cleveland Chair Company and determined that such accounts were overstated by approximately $43,000. The accountant did not have his workpapers at the time of the trial and did not know what adjustment if any was made on the companies' books.

When Wooten returned on leave shortly after he entered the military service, he discussed the $43,000 shortage in the accounts receivable of the two companies with Jackson. After Wooten went into the service Jackson personally handled all purchasing for both Jackson Manufacturing Company and Cleveland Chair Company until sometime in 1945 when he hired a man named Bill Randolph to work for the companies.

Both during the time that Wooten was with Jackson Manufacturing Company and Cleveland Chair Company and thereafter, Jackson himself withheld from posting to the accounts receivable ledgers, certain invoices and diverted the proceeds of the customers' checks in payment therefor

from the businesses of Jackson Manufacturing Company and Cleveland Chair Company so that the amounts thereof were not included in the gross sales of either of the companies, but he did not use any of the amounts so diverted for the purchase of materials for the two companies.

In determining the price which could be charged for various items of furniture manufactured and sold by Jackson Manufacturing Company and Cleveland Chair Company, the cost of upholstery material used was the Black Market price actually paid in instances where such material had been purchased at a Black Market price, and any such material in inventory at the date an inventory was taken was placed in inventory at the Black Market price actually paid.

The following schedule shows a comparison of the percentage of net income to net sales of furniture manufacturers according to certain statistical compilation with similar percentages of Jackson Manufacturing Company and Cleveland Chair Company:

	1941	1942	1943	1944	1945	1946	1947	1948	1949
Dun & Bradstreet—Furniture Manufacturers (over 100 concerns each year)	3.10	2.73	3.31	4.63	4.52	5.82	5.24	....	....
Southern Furniture Manufacturers' Association (before taxes)	6.38	5.42	6.19	6.46	8.53	....	....	....	....
Jackson Manufacturing Company:									
Per the partnership return of income (before taxes)	4.52	9.46	9.57	13.99	12.71	23.35	15.89	....	....
As determined by respondent in the notice of deficiency (before taxes)	7.53	12.87	27.02	17.40	13.22	....	....	....	....
Cleveland Chair Company:									
Per the corporate return of income (before taxes)	4.32	3.72	9.61	8.04	10.27	15.21	16.32	17.58	12.83
As determined by respondent in the notice of deficiency (before taxes)	....	4.19	21.38	10.60	10.83	....	....	....	....

During the period from 1936 through 1945, Dodd was the manager of the East Chattanooga Branch of the Hamilton National Bank. In 1946 Dodd was transferred to a bank in Cedartown, Georgia, where he was for a short period before returning to the East Chattanooga Branch of the Hamilton National Bank where he remained until his resignation on February 1, 1950. Jackson first met Dodd in 1936 when the Jackson Manufacturing Company's operations in East Chattanooga, Tennessee were commenced. Jackson and Dodd frequently had lunch together but were not otherwise friends socially. Jackson borrowed money from time to time from the East Chattanooga Branch of the Hamilton National Bank, and Dodd handled these transactions for Jackson, as well as miscellaneous other financial transactions. Jackson trusted Dodd and accepted advice from him on financial matters. Dodd and Jackson would from time to time do favors for each other, and Jackson was of the opinion that Dodd always performed agreements which he had with him.

In some cases Jackson would leave notes and checks signed in blank with Dodd to cover situations which might arise when Jackson would not be available to sign such documents. On occasions Dodd covered overdrafts at the bank for Jackson. Jackson, through his businesses, became the largest depositor in the East Chattanooga Branch of the Hamilton National Bank which Dodd managed.

Jackson made personal loans to various parties from time to time and Dodd assisted him in handling these loans. Sometimes during the years here involved Jackson turned over to Dodd the handling of his private loans. From

time to time Dodd would account to Jackson for collections on these loans.

As of December 31, 1945, the partnership, Jackson Manufacturing Company, was liquidated and a corporation under the name of Jackson Manufacturing Company was formed which took over the business previously operated by the partership. The stock of the new corporation was issued to Jackson and Alice in exchange for assets turned over to the corporation.

Jackson Manufacturing Company, a partnership, omitted sales from its partnership returns of income from which the distributable partnership income of Jackson and Alice was computed in the following amounts for the years indicated:

Year	Amount
1942	$ 26,145.76
1943	224,865.72
1944	50,289.14
1945	8,232.94
Total	$309,533.56

Jackson Manufacturing Company, on its partnership returns of income from which the distributable income of Jackson and Alice was computed, omitted purchases from its cost of goods sold for the years 1942, 1943, and 1944, in the amounts of $100, $48,000, and $900, respectively. The partnership did not omit any purchases from costs of goods sold on its return of income for the year 1945.

Cleveland Chair Company omitted sales from its Federal income, declared value excess profits, and excess profits tax returns in the following amounts for the years indicated:

Year	Amount
1942	$ 3,327.60
1943	203,131.41
1944	37,577.09
1945	11,808.74
TOTAL	$255,844.84

The Cleveland Chair Company omitted purchases from its costs of goods sold for these same years in the respective amounts of $100, $49,000, $900, and none.

Jackson and Alice each omitted from their reported income for the years 1942 through 1945 their distributive portion of the understatement of partnership income on the basis of 55 percent to Jackson and 45 percent to Alice. Jackson omitted income received from Cleveland Chair Company through withholding checks of that corporation to the extent of 55 percent of the withheld amounts less the amounts of omitted purchases, and Alice to the extent of 45 percent of such amount but limited by the available earnings and profits of Cleveland Chair Company.

Jackson, on his Federal income tax return for the year 1942, failed to report $12.90 of interest on his personal savings account and reported no interest for the years 1942 through 1947 on the various accounts in the name of Jolly Jewell, Herbert Jewell, John Jones, W. E. Wooten, and others.

Alice failed to report interest from her personal savings account for the years 1942, 1943, 1944, and 1945 in the amounts of $31.60, $49.80, 99.15, and $103.40, respectively, and reported no interest for the years 1942 through 1947 from the various accounts in the names of Jolly Jewell, Herbert Jewell, John Jones, W. E. Wooten, and others.

W. R. Jackson and Alice Jewell Jackson, for the years 1948 and 1949, reported no interest from the various accounts in the names of Jolly Jewell, Herbert Jewell, John Jones, W. E. Wooten, and others as heretofore listed.

The Jackson Manufacturing Company on its partnership returns of income reported and claimed deductions for the years 1942, 1943, 1944, and 1945 as follows:

1942			
Sales			$ 668,139.42
Cost of goods sold			
Beginning inventory		$ 35,861.75	
Purchases:			
Lumber	$ 51,115.03		
Raw materials	174,394.19		
Upholstering materials	196,904.38		
Freight and express	11,830.66		
		434,234.26	
Labor		104,669.83	
Manufacturing expenses		13,424.88	
		$ 588,190.02	
Less: Ending inventory		37,108.32	
Total: Cost of goods sold			551,081.70
Gross profit on sales			$ 117,057.72
Less: Selling expenses			37,754.82
			$ 79,302.90
Less: Operating expenses			11,900.67
			$ 67,402.23
Plus: Other income			8,458.90
			$ 75,861.13
Less: Other expense			17,929.88
Net book profit			$ 57,931.25
Plus: Partners' salaries			4,680.00
Contributions			619.00
Net income			$ 63,230.25
1943			
Sales			$ 940,537.87
Cost of goods sold			
Beginning inventory		$ 37,108.32	
Purchases:			
Lumber	$107,411.09		
Raw materials	206,401.17		
Upholstering materials	244,379.73		
Freight and express	20,412.62		
		587,604.61	
Labor		171,859.09	
Manufacturing expenses		21,267.01	
		$ 808,839.03	
Less: Ending inventory		25,232.09	
Total: Cost of goods sold			783,606.94
Gross profit on sales			$ 156,930.93
Less: Selling expenses			47,999.53
			$ 108,931.40
Less: Operating expenses			13,370.65
			$ 95,560.75
Plus: Other income			8,085.46
			$ 103,646.21
Less: Other expense			19,010.09
Net book profit			$ 84,636.12
Plus: Partners' salaries			4,930.00
Contributions			459.00
Net income			$ 90,025.12

1944			
Sales			$1,218,744.34
Cost of goods sold			
Beginning inventory		$ 25,232.09	
Purchases:			
Lumber	$ 80,982.67		
Raw materials	282,291.89		
Upholstering materials	389,903.80		
Freight and express	26,021.28		
		779,199.64	
Labor		170,437.82	
Manufacturing expenses		23,819.11	
		$ 998,688.66	
Less: Ending inventory		26,362.30	
Total: Cost of goods sold			972,326.36
Gross profit on sales			$ 244,417.98
Less: Selling expenses			54,124.43
			$ 190,293.55
Less: Operating expenses			15,644.29
			$ 174,649.26
Plus: Other income			11,694.02
			$ 186,343.28
Less: Other expense			24,824.80
Net book profit			$ 161,518.48
Plus: Partners' salaries			7,300.00
Contributions			1,433.00
Net income			$ 170,241.48
1945			
Sales			$1,400,417.44
Cost of goods sold			
Beginning inventory		$ 26,362.30	
Purchases:			
Lumber	$101,118.34		
Raw materials	277,592.05		
Upholstering materials	527,003.66		
Freight and express	24,110.02		
		929,824.07	
Labor		195,035.57	
Manufacturing expenses		23,802.59	
		$1,175,024.53	
Less: Ending inventory		35,165.25	
Total: Cost of goods sold			1,139,859.28
Gross profit on sales			$ 260,558.16
Less: Selling expenses			57,674.38
			$ 202,983.78
Less: Operating expenses			14,880.26
			$ 188,103.52
Plus: Other income			10,855.01
			$ 198,958.53
Less: Other expense			29,250.72
Net book profit			$ *169,707.81
Plus: Partners' salaries			7,440.00
Contributions			918.25
Net income			$ 178,066.06

The Cleveland Chair Company on its corporate income tax returns, from which its excess profits tax net income reported on those returns, and declared value excess profits tax net income reported on those returns was computed, showed income and claimed deductions for the years indicated as follows:

1942		
Sales		$ 703,327.79
Less: Cost of goods sold		
Beginning inventory	$ 92,814.06	
Purchases	355,850.66	
Salaries and wages	177,772.83	
Other costs	9,887.28	
	$636,324.83	
Less: Ending inventory	51,067.53	585,257.30
		$ 118,070.49
Interest		7.45
		$118,077.94
Less: Deductions		91,928.62
		$ 26,149.32
Less: Declared value excess profits tax		405.86
Net income		25,743.46
Excess profits net income		$ 25,967.41
1943		
Sales		$1,089,875.96
Less: Cost of goods sold		
Beginning inventory	$ 51,067.53	
Purchases	612,942.18	
Salaries and wages	268,181.31	
Other costs	14,681.18	
	$946,872.20	
Less: Ending inventory	54,372.47	892,499.73
		$ 197,376.23
Other income		2,902.29
		$ 200,278.52
Less: Deductions		128,249.44
		$ 72,029.08
Less: Declared value excess profits tax		—0—
Net income		$ 72,029.08
Excess profits net income		$ 72,029.08

1944		
Sales		$1,301,397.98
Less: Cost of goods sold		
Beginning inventory	$ 54,372.47	
Purchases:		
Lumber	174,267.77	
Raw materials	291,221.20	
Upholstering materials	281,274.60	
Freight and express	38,998.21	
Labor	274,177.72	
Manufacturing expenses	40,790.80	
	$1,155,102.57	
Less: Ending inventory	70,943.73	1,084,158.84
		$ 217,239.12
Selling, operating, and other expenses		121,219.86
		$ 96,019.26
1944		
Other income		$ 8,620.94
		$ 104,640.20
Less: Declared Value Excess Profits tax		306.25
Net income		104,333.95
Excess profits net income		104,333.95
1945		
Sales		$1,648,764.11
Less: Cost of goods sold		
Beginning inventory	$ 70,943.73	
Purchases	1,043,006.26	
Salaries and wages	273,400.04	
Other costs	18,313.89	
	1,405,663.92	
Less: Ending inventory	88,645.75	1,317,018.17
		$ 331,745.94
Interest		1,276.59
Other income		475.72
		$ 333,498.25
Less: Deductions		164,215.66
		$ 169,282.59
Less: Declared value excess profits tax		2,922.65
Net income		$ 166,359.94
Excess profits net income		$ 166,359.94

Respondent in his notice of deficiency increased the reported income from distributable partnership income of Jackson and Alice for the years and in the amounts as follows:

Year	Jackson	Alice
1942	$ 16,339.18	$ 9,806.58
1943	125,772.64	99,093.08
1944	27,659.03	22,630.11
1945	4,605.12	3,627.82

Respondent increased the reported income of Jackson and Alice by the following amounts, stated to represent distributions from the Cleveland Chair Company:

Year	Jackson	Alice
1942	$ 1,830.18	$ 1,497.42
1943*	92,242.84	75,471.42
1944	20,667.40	16,909.69
1945	6,494.81	5,313.93

* The distribution included by respondent in 1943 was limited by available earnings and profits of Cleveland Chair Company as computed in the deficiency notices.

Respondent increased the reported income of Jackson and Alice for the years 1942, 1943, 1944, 1945, 1946 and 1947 by amounts stated to represent unreported interest as follows:

Year	Jackson	Alice
1942	$ 12.90	$ 31.60
1943	169.79	188.71
1944	666.04	644.09
1945	416.04	443.79
1946	296.37	342.32
1947	252.69	428.65

Respondent increased the income as reported on the joint Federal income tax returns of Jackson and Alice for the years 1948 and 1949 in the respective amounts of $956.97 and $610.53, stated to represent unreported interest income.

Respondent determined that there were unreported sales of the partnership, Jackson Manufacturing Company, and the corporation, Cleveland Chair Company, all of which represented net income, for the years and in the amounts as follows:

Year	Jackson Manufacturing Co.	Cleveland Chair Co.
1942	$ 26,145.76	$ 3,327.60
1943	224,865.72	203,131.41
1944	50,289.14	37,577.09
1945	8,232.94	11,808.74

In the case of Cleveland Chair Company respondent determined deficiencies in declared value excess profits tax and excess profits tax based primarily on adding in as additional income the unreported sales as

determined by respondent but also making certain minor adjustments which have not been contested herein, other than to the extent that petitioners contend the statute of limitations bars the assessment or collection of a deficiency for any of the years here involved.

Respondent determined an addition to tax under section 293(b) of the Internal Revenue Code of 1939 to be due from each petitioner in each year in which a deficiency was determined because a part of such deficiency was due to fraud with intent to evade tax and determine an addition to income tax for fraud to be due from Cleveland Chair Company for 1942 although no deficiency in tax for that year was determined.

Ultimate Facts

1. W. R. Jackson filed false and fraudulent income tax returns for each of the years 1942, 1943, 1944, and 1945 with intent to evade tax and therefore assessment and collection of deficiencies in income tax from him for these years are not barred by the statute of limitations. Respondent has failed to show that the returns filed by W. R. Jackson for the years 1946 and 1947 were false or fraudulent with intent to evade tax. Therefore the assessment of any deficiency for these years is barred by the statute of limitations.

2. There is a deficiency in income tax due from W. R. Jackson for each of the years 1942, 1943, 1944, and 1945, some part of which is due to fraud with intent to evade tax.

3. Respondent has failed to prove by clear and convincing evidence that the returns filed by Alice Jewell Jackson for any one of the years 1942, 1943, 1944, 1945, 1946, and 1947 were false or fraudulent with intent to evade tax and therefore the assessment or collection of any deficiency in tax from Alice Jewell Jackson for each of these years is bar-

red by the statute of limitations.

4. Cleveland Chair Company filed false and fraudulent excess profits and declared value excess profits tax returns for each of the years 1942, 1943, 1944, and 1945, and a false and fraudulent income tax return for the year 1942, and therefore assessment and collection of deficiencies in these taxes for these years from Cleveland Chair Company are not barred by the statute of limitations.

5. There is a deficiency in declared value excess profits tax and a deficiency in excess profits tax due from Cleveland Chair Company for each of the years 1942, 1943, 1944, and 1945, part of which is due to fraud with intent to evade tax.

6. W. R. Jackson and Alice Jewell Jackson have failed to prove that respondent erred in increasing their taxable income by unreported interest for each of the years 1948 and 1949.

7. Respondent has failed to establish that any portion of the deficiency due from W. R. Jackson and Alice Jewell Jackson for either the years 1948 or 1949 was due to fraud with intent to evade tax.

Opinion

For all years here involved with respect to each petitioner, other than the joint liability of Jackson and Alice for the years 1948 and 1949, the assessment or collection of deficiencies is barred by the statute of limitations in the absence of fraud.

The evidence with respect to Alice is not clear and convincing that she knew anything about the understatement of sales by Jackson Manufacturing Company or Cleveland Chair Company, or knew that checks in payment of accounts receivable were diverted from the companies' accounts. The record shows that her work for the companies was of a type which

would not necessitate knowledge of the keeping of the books of the companies or of the amount of sales made by them.

Respondent's primary argument that Alice's returns were false or fraudulent with intent to evade tax is based on the assumption that since she was a 45 percent owner in each business and since certain of the moneys obtained from the diverted sales were used to purchase assets for her such as her interest in the farm and 45 percent of the additional stock in Cleveland Chair Company, it necessarily follows that she knew of the unreported income. At best, respondent's argument raises a suspicion that she might have known of the unreported income either from her general association with the businesses or from information furnished her by her husband. A suspicion is not the clear and convincing evidence needed to establish fraud. Since Alice did not file joint returns with her husband for the years 1942 through 1947 but filed separate returns, proof that Alice's husband's returns were false or fraudulent for any of these years is not clear and convicing evidence that Alice's returns were likewise false or fraudulent. *United Dressed Beef Co.* (Dec. 20,875, 23 T. C. 879 (1955). Alice did omit certain small amounts of interest on her personal savings account from her return, but the evidence does not show that her failure to furnish the accountant who prepared her returns with information as to the amount of this interest was intentional. Since the parties agree that the assessment or collection of any deficiency from Alice for any of the years 1942, 1943, 1944, 1945, 1946, and 1947 is barred by the statute of limitations in the absence of fraud, we hold that respondent erred in his determination of any deficiencies against Alice for any of these years.

The evidence is clear and convicing that the returns filed by Jackson and by Cleveland Chair Company for each of

the years 1942, 1943, 1944, and 1945 were false and fraudulent with intent to evade tax and that some part of the deficiencies in each tax here in issue of Jackson and Cleveland Chair Company for each of these years was due to fraud with intent to evade tax. The evidence shows that Jackson as an officer of Cleveland Chair Company falsified the returns of that company with intent to evade tax. Such proof is sufficient to establish that the corporate returns were false and fraudulent. *Auerbach Shoe Co.* (Dec. 19,972), 21 T. C. 191 (1953), affd. (54-2 USTC par 9673) 216 F 2d (C. A. 1, 1954, 693 and *United Mercantile Agencies, Inc.* (Dec. 20,940), 23 T. C. 1105 (1955), affd. (57-1 USTC par. 9212) 238 F. 2d 735 (C. A. 6, 1956). Since the evidence shows that Jackson was responsible for the understatement of income both in partnership returns of income and the corporate returns, the proof of fraud with respect to Jackson's own returns and the corporate returns follows a similar pattern.

Jackson admits that the sales of both the partnership and the corporation were understated by the amounts of the customers' checks received by each which were not credited to gross sales of the businesses but contends that all the money obtained from the cashing of such checks was used for purchases of Black Market materials, the cost of which was not included in the cost of goods sold as shown on the tax returns filed.

Petitioner admits that the checks as analyzed by respondent were deposited to the various fictitious accounts and that withdrawals from these accounts were the source of funds for the purchase of Jackson's farm, Rome County bonds, stock in Cleveland Chair Company, and for similar personal purposes of Jackson. Petitioners contend and Jackson testified that he though these funds were coming to him from other sources, primarily from loans arranged by Dodd. Jackson denied that he knew of the existence of these accounts, except the Thomas Rogers account and the Jackson and Woo[redacted] count. Jackson did not consider the Jackson and Wooten account as ficititious. Petitioner therefore speculates that when the checks were cashed Dodd used moneys otherwise available to him to give Jackson the cash and then deposited the checks to the various fictitious accounts without Jackson's knowledge.

The evidence is clear and convincing that the proceeds of a great number of the checks cashed which were not included in the gross sales of the businesses were not used for the purchase of materials on the Black Market but were diverted to Jackson's personal uses. Respondent has traced funds from the various accounts to the personal uses of Jackson as set forth in our findings of fact. Petitioners' only attempt to counteract this is to contend that Jackson thought the money was coming from Dodd through collections Dodd was making for him or through loans Dodd arranged for him, except as to the farm transaction where Jackson contends that he borrowed $40,000 from his farther for use toward the purchase of the farm.

We have not set forth in detail the various explan-

ations which Jackson attempted to give since they are so inconsistent and confused as to be totally unworthy of belief. Jackson's testimony with respect to Wooten, a young man who at the time the Black Market purchases began was not over 25 years old, having been responsible for cashing of the checks of the two businesses in the amounts here shown to have been diverted from gross sales in totally unbelievable. Wooten himself testified and he did not deny that when first interviewed by respondent's agents he had estimated that the total amount of cash from checks of Jackson Manufacturing Company and Cleveland Chair Company which he handled during the entire time he was working for Jackson's two companies prior to entering the service in April 1944, was between $75,000 and $100,000 and that he spent such amount in Black Market purchases. He said that he could not presently remember the amount he handled but if he had told respondent's agents it was between $75,000 and $100,000 when he was first interviewed, that would be his best recollection. At the trial he testified that he never handled more than $20,000 to $25,000 in cash for Black market purchases at any one time.

The record shows total checks cashed far in excess of the $75,000 to $100,000 that Wooten estimated he spent for Black Market purchases. The record also shows checks to Jackson Manufacturing Company and Cleveland Chair Company which were not recorded in the receipts of these companies in excess of $25,000 clearing on a specific date in a number of instances. For instance, as of August 27, 1943, checks of the Jackson Manufacturing Company in amounts over $40,000 and of Cleveland Chair Company in amounts over $33,000 were cashed and there are other similar instances shown

in the facts, as for instance the January 8, 1944, deposit to the Jolly Jewell account of $32,917.43 and the January 31, 1944 deposit of $35,984.48 of checks of Jackson Manufacturing Company to the Ralph Wooten account. Viewed in its entirety Wooten's testimony clearly shows that he cashed and spent in Black Market purchases only a small portion of the diverted funds.

Jackson specifically denied personally spending any funds in Black Market activities other than the $25,000 deposited to the Thomas Rogers account which he admitted having some knowledge of and certain cash payments to a Yates Bleaching Company which he said were made by Dodd with funds he had left with Dodd. Jackson denied knowing how the obtaining of such funds left with Dodd was handled, claiming that the girl in his office by the name of Cavanaugh in some way handled it.

We have not found fraud for the years 1946 and 1947 in the case of Jackson since, though we think the evidence is clear and convincing that the funds from the cashed checks, except to the extent we have found that they went to purchase material on the Black Market, were diverted by Jackson to his personal use or for the benefit of himself and Alice, it is not equally as clear that Jackson knew that the funds were placed in fictitious savings accounts where they drew interest. It is clear that Jackson knew that Dodd was holding the proceeds of the cashed checks for him and that he could call on Dodd for the cash as he wanted it. The available deposit slips to the savings account were all in Dodd's handwriting. While this does not show that Jackson did not know of such accounts since the evidence shows that it is not uncommon for an employee or officer of the bank to make out such slips for a cli-

ent, it does not establish that Jackson did know of such deposits.

Though the record shows that Dodd was present in the courtroom during the entire trial, neither party chose to call him as a witness. Each party explained the failure to call Dodd by the fact that he, himself, had been the petitioner in a case before this Court involving the years 1942 to 1949, inclusive, in which we held that his Federal income tax return for each of such years was false and fraudulent with intent to evade tax.[2]

Petitioners argue that the fact that there were no deposits of cashed checks to fictitious accounts after January 31, 1944, even though Jackson continued in a high tax bracket thereafter, indicates that all of the moneys were being spent for Black Market activities. No such conclusion follows. The explanation of the reduced activities in cashing of company checks is more likely tied in with stronger controls which gradually the certified public accountant who audited the books of the two businesses kept over the books after being called in when Jackson became concerned that perhaps $43,000 of the sales had been diverted by Wooten for his own purposes.

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[2] E. C. *Dodd* (Dec. 25,693(M), T. C. Memo. 1962-235, dated October 5, 1962. Petitioners also in this connection refer to the cases of *United States v. Lefkoff* (54-1 USTC par. 9114), 113 F. Supp. 551 (E. D. Tenn., S. C. 1953), and *Lefkoff v. Darr*, an unreported case (C. A. 6, Dec. 17, 1953), 1954 P. H. par. 72356, 54-1 U. S. T. C., sec. 9293.

Petitioners, in arguing that respondent has failed to meet his burden of proof, rely primarily on *Richardson v. Commissioner*, (59-1 USTC par 9292), 264 F. 2d 400 (C. A. 9, 1959), affirming in part and reversing in part a Memorandum Opinion of this Court (Dec. 22,925(M). In reversing our opinion as to the fraud issue the Circuit Court relied on *Valetti v. Commissioner* (58-2 USTC par. 9869) 260 F. 2d 185 (C. A. 3, 1958), and quoted from that case the following language:

It is not enough than an apparent discrepancy between the large commissions shown by the taxpayer's records and the smaller commissions said to have been paid by other chandlers permitted, though it did not require, an inference of error in the taxpayer's records. This permisive inference was not an adequate base upon which to build a second inference that the inferred error was made with fraudulent intent to evade income taxes, in a situation where this ultimate conclusion had to be established in a clear and convincing way.

Petitioners specifically rely upon the following language from *Richardson v. Commissioner, supra* (p. 405):

'We cannot agree that the finding of an understatement of gross receipts automatically puts on the taxpayers the oblegation to prove the offsetting deductions in order to escape a fraud penalty. Such a contention might have more force in a case where the unreported income and deductions were unrelated or only remotely related. There, the Tax Court might be justified in thinking that the newly asserted deductions were conceived belatedly in an effort to add to the Commissioner's burden. It might reasonably be contended in such a case that the taxpayer should have the burden even on the issue to fraud. We have no occasion to decide this, however, for here the un-

reported income and the unclaimed deductions are intertwined. We think that the failure to report these two items is not a sufficient ground upon which to distinguish the instant case from Valetti and thus to lessen the burden on the Commissioner. In order for a fraud penalty to be assessed where the unreported items of income and expense are closely related, the Commissioner must prove that at least some unreported net income resulted from the unrecorded transactions. This principle was applied in the Tax Court in H. J. *Feinberg & Co., Inc.* (Dec. 17,852(M), 9 T. C. M. 776 (1950)."

In the instant case respondent has traced a goodly portion of the moneys from the cashed checks directly into uses for personal purposes of Jackson and Alice and Jackson has offered no explanation which is worthy of belief of how these moneys were available for his personal use. The credible evidence of record shows that not over $100,000 of Black Market purchases for the two businesses were omitted from purchases during the years 1942, 1943, and 1944, and that no such accounts were omitted in 1945. The credible evidence also shows that most of the Black Market purchases were entered on the books during 1942 when company checks were being written to cash and lumber bought on a basis of upgrading.

These facts, proved by respondent by clear and convincing evidence, sufficiently distinguish the instant case from *Richardson v. Commissioner, supra,* to make *Richardson v. Commissioner, supra,* inapplicable. See *United States v. Bender* (55-1 USTC par. 9142), 218 F. 2d 869 (C. A. 7, 1955), certiorari denied 349 U. S. 920 (1955); *Paul Masters* (Dec. 21, 589), 25 T. C. 1093 (1956), affd. (57-1); USTC par. 9529) 243 F. 2d 335 (C. A. 3, 1957); *Davis v. United States* (55-2 USTC

par. 9685), 226 F. 2d 331 (C. A. 6, 1955).

In addition to the Thomas Rogers account, Jackson admitted knowledge of the W. E. Wooten and W. R. Jackson account but contended that this account was set up for the signatures of Wooten and himself to use for making loans to employees and that it was closed out after he was advised that this might be objectionable to the labor unions. It will be noted that no withdrawal from this account was made from the time it was opened on March 25, 1942, with a $107.25 deposit until it was closed on June 17, 1942, by the withdrawal of the entire $5,539.65 which had been deposited in it. On that same date the John Jones account was opened with a deposit of $5,708. We have found that the amount withdrawn at the closing of the W. E. Wooten and W. R. Jackson account made up that portion of the deposit to the John Jones account. This is one of the few items of deposits to these various accounts which petitioners to some extent question as distinguished from contending, that all of these transactions, although in fact correctly shown by respondent, occurred without Jackson's knowledge. In this particular instance, petitioners in their reply brief state:

"It could be speculated that at the time this account was closed at the height of the Black Market purchase activity during 1943, cash was requested, which was supplied by Dodd from his side fund, and he in turn deposited the check closing out the Wooten and Jackson account to the John Jones account which he controlled."

Irrespective of the speculation as to the disposition of the funds when the account was closed out, it is absolutely clear that no withdrawals from the account were made to make loans to employees at any time while it was maintained and therefore the proven facts do not bear out petitioners' explanation of this account.

Petitioners likewise attack the bank records and point to a number of instances where entries are out of sequence or some correction has been made by a strikeover or change of a figure in ink, or some such similar irregularity exists. There are irregularities in the bank records which appear to be the type that efficient management should not permit, but these irregularities do not explain the money withheld from sales by Jackson.

In considering the fraud aspects of the case, we have only considered the checks which were endorsed by Jackson Manufacturing Company and Cleveland Chair Company which were diverted from the businesses by Jackson since, other than by inference, respondent has not shown the source of the other funds which he has included in computing the omitted income of each of these businesses. As shown in our findings of fact the amounts of the checks specifically identified by respondent as not included in gross sales of the businesses are $302.05, $166,598.04, $40,675.02, and $8,232.94 for the Jackson Manufacturing Company for the years 1942, 1943, 1944, and 1945, respectively, and $3,285.69, $202,116.82, $37,577.09, and $11,698.86 for the Cleveland Chair Company for these same years. These amounts far exceed Wooten's estimate of total Black Market purchases and also exceed any amounts which might appear to have been omitted from purchases on the basis of evidence which petitioners argue inferentially establishes that there were some Black Market purchases.

Jackson testified that upholstery material on the average represented 25 percent of the sales price of the products. The evidence shows that the purchases of upholstery material by Jackson Manufacturing Company as reported on its partnership returns of income for the years 1942, 1943, 1944, and 1945 were $196,904.38, $244,379.73, $389,903.26 and $527,003.66 respectively. A computation of 25 percent of part-

nership sales as determined by respondent for the years 1942, 1943, 1944, and 1945 results in $175,573.29, $291,352.90, $316,758.36, $352,162.62, respectively. If only the checks endorsed by Jackson Manufacturing Company are added into sales, 25 percent of the amount of such increased sales obviously comes to even less. It is readily apparent that in only the year 1943 do the purchases of upholstery materials as shown on the partnership returns of income amount to less than 25 percent of the sales shown or the sales as determined by respondent. When the $49,000 we have determined as the amount by which cost of goods sold was understated in 1943 is added to the purchases of upholstery materials as shown on the partnership return of income for the year 1943, the resultant figure is slightly over 25 percent of the amount which respondent determined as partnership sales for the year. Since the change in inventory of materials was very slight, the purchase of such materials must closely approximate the cost of materials used.

The figure for purchases of upholstery materials as a separate item on the income tax returns for Cleveland Chair Company is not shown for any year except 1944 and the effect of inventory changes might well be to distort any comparison of purchases of upholstery materials to sales for the one year. For that year the purchases on the corporate income tax returns show "Raw Materials" as $291,221.20 and "Upholstery Materials" as $281,274.60. The evidence clearly shows that the largest one item of material cost in the manufacture of furniture by Cleveland Chair Company as well as Jackson Manufacturing Company is upholstery materials. Therefore, a substantially larger portion of the $54,372.47 of the opening inventory of materials than of the $70,943.73 closing inventory must have consisted of upholstery material to make this item the largest item of material costs.

The comparison of statistical data of industry percentage of net profit to sales with similar data for the businesses of Jackson Manufacturing Company and Cleveland Chair Company likewise tends to demonstrate that not all the withheld sales were omitted from cost of goods sold. Jackson's two businesses did consistently better than the industry average and it is noted that in 1946 and 1947 when Jackson does not contend there were any Black Market purchases, the Cleveland Chair Company and Jackson Manufacturing Company further exceeded the industry increase than in the years 1942 and 1944 as adjusted by respondent. Therefore, this comparison tends to show that there was a very small amount of Black Market purchases omitted from the records of Jackson Manufacturing Company and Cleveland Chair Company in the years 1942 and 1944, Wooten testified that the Black Market purchases which were omitted from the purchase records were small in 1942, greatly increased in 1943 and that he ceased to make such purchases for the partnership and corporation when he went into the service.

We have accepted his estimate of the total purchases which he made being between $75,000 and $100,000 and have used the $100,000 figure since Wooten testified with respect to a $25,000 purchase which he had arranged for but for which Jackson was to pay. Jackson's own testimony is that other than this one purchase he made no Black Market purchases. From this evidence and the comparison of figures for the various years, we have concluded that there were omitted purchases by each Jackson Manufacturing Company and Cleveland Chair Company of $100 in 1942, $49,000 in 1943, and $900 in 1944.

Petitioners contend that respondent has failed to show fraud in the case of Jackson because he did not confirm his determination of omitted income by a net worth computa-

tion showing Jackson's yearly increases in net worth. Although fraud may be established by net worth computations with a likely source for the increases, where the evidence shows specific omission of income, such a computation is not necessary to establish fraud by clear and convincing evidence. *Emilie Furnish Funk* (Dec. 22,664), 19 T. C. 179, affirmed and remanded on another issue sub nom (59-USTC par. 9189), *Furnish v. Commissioner* (59-USTC par. 9189), 262 F. 2d 727 (C. A. 9, 1958).

Petitioners further contend that since both Jackson Manufacturing Company and Cleveland Chair Company were on an accrual basis of accounting, respondent has not established that the omitted sales represented income in the years in which the checks were cashed. This is true with respect to certain checks shown to have been cashed in the early part of the years 1943 and 1944 because the evidence shows that generally during the years here involved accounts were paid within 30 days and sometimes within 60 days. However, in each of the years here involved there are sufficient amounts of checks cashed more than 60 days after the beginning of the years to show income diverted from the companies to Jackson's own use.

Petitioners fianlly rely on certain testimony as to Jackson's reputation. Several witnesses were asked about Jackson's reputation for character and integrity, and they stated that this reputation was of the highest. However, these witnesses did not profess to know that Jackson was dealing in the Black Market and one such witness, George Castings, Vice President of the Cleveland National Bank in Cleveland, Tennessee, where during the years 1942 through 1945 the payroll account of the Cleveland Chair Company was carried, stated that he had never heard of Jackson's dealings in the Black Market to any extent at any time including the war years

and that he had been in a position to have heard if it had been a fact that Jackson was dealing in the Black Market.

It is likewise significant that at the time that respondent's agents were making their investigation of petitioners' tax liability, Jackson furnished them with no names of either individuals or firms from which Black Market purchases had been made to permit them to check the amount of such purchases.

At the trial of the case several names were mentioned by Jackson and Wooten as persons from whom Black Market purchases were made but no such person was called as a witness and Jackson generally testified that he did not know where presently to locate these individuals. There was testimony about unsatisfactory Black Market purchases from a man by the name of Kaufman by both Wooten and Jackson, but Jackson proceeded to attempt to explain later Black Market purchases as having been made from this same individual.

Petitioners point out that over-ceiling prices paid for Black Market goods have been held to be includable in cost of goods sold in computing taxable income, citing such cases as *Lela Sullenger* (Dec. 16,735), 11 T. C. 1076 (1948). We have made allowance for the maximum amount the record supports as Black Market purchases omitted from purchases on the records of Jackson Manufacturing Company and Cleveland Chair Company in our computation and there still remains substantial withholdings from sales that are not thus accounted for.

Petitioners stress the limited formal education of Jackson and argue that he did not understand accounting. Jackson's understanding of the cost sheets of his businesses show that he had a fair understanding of accounting. The record is completely clear that Jackson understood that he was taxable on his distributable share of the partnership income and that

such income included all partnership receipts even though he kept such receipts for his own use.

The evidence is clear and convincing that Jackson's income tax returns for the years 1942, 1943, 1944, and 1945 and the declared value excess profits and excess profits tax returns of the Cleveland Chair Company for these same years and the income tax returns of Cleveland Chair Company for the year 1942 were false and fraudulent with intent to evade tax.

Since respondent has not shown by clear and convincing evidence that Jackson did know of the interest being drawn on the fictitious accounts in which his money was being deposited, respondent has failed to show by clear and convincing evidence that Jackson's returns for the years 1946 and 1947 were false or fraudulent with intent to evade tax.

Having determined that respondent has shown by clear and convincing evidence that the returns of Jackson and Cleveland Chair Company for the years 1942 through 1945 were false and fraudulent with intent to evade tax, there remains the question of the proper computations of taxable income for each of these petitioners for these years. It is unnecessary to go into this aspect of the case with respect to Alice for any of the years 1942 through 1947 or with respect to Jackson for the years 1946 and 1947, since we have determined that respondent has failed to show by clear and convincing evidence that the returns filed by Alice for the years 1942 through 1947 and the returns filed by Jackson for the years 1946 and 1947 were false or fraudulent with intent to evade tax and therefore assessment or collection of a deficiency is barred for those years.

Respondent in his determination included in the income of Jackson Manufacturing Company all unidentified deposits to the various fictitious accounts including the W. E.

Wooten and W. R. Jackson account, which petitioners do not view as fictitious and checks cashed where the last endorsement was by W. R. Jackson, Ray Jackson or Lee Jackson as well as all checks to Jackson Manufacturing Company which were not deposited to that company's account. For the proof of fraud by respondent we have not considered that it had been sufficiently established that Jackson knew the funds from the checks which were cashed by him were being placed in these accounts, as distinguished from being held in cash by Dodd, who Jackson himself testified, and certain related evidence indicated, was handling certain collections of personal loans for Jackson. However, there is certainly no reliable evidence in the record to establish that these various accounts did not in fact belong to Jackson. The only evidence in this regard is Jackson's own statement which we consider unworthy of belief upon observation of Jackson as a witness and a consideration of all his testimony.

The evidence of checks endorsed by Jackson Manufacturing Company and Cleveland Chair Company and by Jackson personally being deposited in these accounts is certainly strong if not clear and convincing that Jackson knew of these accounts and that all funds therein belonged to him. Furthermore, the evidence is clear that respondent did not obtain all transit letters and that transit letters did not include local checks. It is therefore highly probable that the unidentified deposits in these accounts came from checks representing sales by Jackson Manufacturing Company and Cleveland Chair Company which were not recorded.

In any event the burden of proof as to the amount of deficiency is on petitioners, and petitioners have totally failed to carry this burden.

Respondent has allowed as transfers between accounts all amounts of withdrawals which are in equal sums or approximate sums or deposits on the same day to another ac-

count.

In this state of the record we sustain the amount of respondent's addition to sales of the two companies, and except for the reduction by the amounts of purchases which we have found were omitted from the companies' records sustained respondent's computation of the resulting increases in income.

We hold that 55 percent of the increased income of Jackson Manufacturing Company so computed for each of the years 1942 through 1945 is includable in Jackson's income as distributable partnership income. We likewise sustain respondent in including in Jackson's income for each of these years, 55 percent of the additional income of Cleveland Chair Company but in accordance with respondent's determination limited to the amount to which the 55 percent is applied does not exceed the available earnings and profits of that corporation.

Since all parties agree that at the time the notices of deficiencies were issued the statute of limitations on the assessment of collection of deficiencies from Jackson and Alice for the years 1948 and 1949 had not expired, we hold that petitioners have failed to show error in respondent's addition to the income as shown on the joint returns of Jackson and Alice for those years of the interest on the various fictitious accounts. However, since respondent has not shown by clear and convincing evidence that Jackson and Alice did know of the interest as distinguished from knowing that the cash was being held, we have found that no portion of such deficiencies was due to fraud with intent to evade tax. The circumstances shown certainly arouse suspicions that petitioners, Jackson and Alice, must have known of the accounts and have known that these accounts were drawing interest but suspicions are not sufficient for a finding of fraud.

We hold that respondent correctly determined the

deficiencies in the joint income tax liability of Jackson and Alice for the years 1948 and 1949 but has failed to establish that any part thereof was due to fraud with intent to evade tax.

Decisions will be entered under Rule 50

TAX COURT OF THE UNITED STATES

Washington

W. R. JACKSON,

Petitioner

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent

Docket No. 70811

DECISION

Pursuant to the determinations of the Court as set forth in its Memorandum Findings of Fact and Opinion, filed December 23, 1964, respondent filed a computation for entry of decision on March 21, 1965, and petitioner filed a partial objection thereto on May 6, 1965. After due notice to the parties, a hearing under Rule 50 was held on July 28, 1965, at which each of the parties was represented by counsel. After due consideration, the facts recited in respondent's computation are incorporated herein as the findings of the Court, and it is

ORDERED and DECIDED: That there are no deficiencies in income tax due from, or overpayments due to, the petitioner for the taxable years 1941, 1946, and 1947;

That there are no deficiencies in additions to the tax under the provisions of section 293(b) of the Internal Revenue Code of 1939 due from the petitioner for the taxable years 1941, 1946, and 1947.

That the following statement shows the petitioner's

liability for income tax and addition to the tax for the taxable year 1942:

		Income tax	Addition to tax, I. R. C. of 1939 Sec. 293(b)
Tax Liability		$31,940.80	$ 6,315.07
Tax assessed:			
Paid	$9,655.34		
Not paid	9,655.32	19,310.66	--
Deficiency (to be assessed)		$12,630.14	$ 6,315.07

That the following statement shows the petitioner's liability for income and victory tax and additions to the tax for the taxable year 1943:

		Income and Victory tax	Addition to tax I. R. C. of 1939 Sec. 293(b)
Tax liability		$197,727.98	$82,412.58
Tax assessed:			
Paid	$30,017.60		
Not paid	4,827.66	34,845.26	--
Deficiency (to be assessed)		$162,882.72	$82,412.58

That there are deficiencies in income tax due from the petitioner for the taxable years 1944 and 1945,

in the amounts of $25,500.37 and $10,531.13, respectively; and

That there are additions to the tax due from the petitioner for the taxable years 1944 and 1945 under the provisions of section 293(b) of the Internal Revenue Code of 1939 in the amounts of $12,750.19 and $5,265.57, respectively.

Entered: August 3, 1965

(Signed) Irene F. Scott

Judge

TAX COURT OF THE UNITED STATES

Washington

WILLIAM R. JACKSON and
ALICE J. JACKSON,

Petitioner

v. Docket No. 70812

COMMISSIONER OF INTERNAL
REVENUE,

Respondent

DECISION

Pursuant to the determination of the Court as set forth in its Memorandum Findings of Fact and Opinion, filed December 23, 1964, respondent filed a computation for entry of decision on March 31, 1965, to which petitioner made no objection. After due notice to the parties, a hearing under Rule 50 was held on July 28, 1965, at which each of the parties was represented by counsel. After due consideration, the facts recited in respondent's computation are incorporated herein as the findings of the Court, and it is

ORDERED and DECREED: That there are deficiencies in income tax due from the petitioners for the taxable years 1948 and 1949 in the amounts of $226.16 and $402.96, respectively; and

That there are no deficiencies in addition to the

tax under the provisions of section 293(b) of the Internal Revenue Code of 1939 due from the petitioners for the taxable years 1948 and 1949.

Entered: August 3, 1965

(Signed) Irene F. Scott

Judge

TAX COURT OF THE UNITED STATES

Washington

CLEVELAND CHAIR COMPANY,

Petitioner

v. Docket No. 70813

COMMISSIONER OF INTERNAL REVENUE,

Respondent

DECISION

Pursuant to the determinations of the Court as set forth in its Memorandum Findings of Fact and Opinion, filed December 23, 1964, respondent filed a computation for entry of decision on March 31, 1965, and petitioner filed a partial objection thereto on May 6, 1965. After due notice to the parties, a hearing under Rule 50 was held on July 28, 1965, at which each of the parties was represented by counsel. After due consideration, the facts recited in respondent's computation are incorporated herein as the findings of the Court, and it is

ORDERED and DECIDED: That there are deficiencies in income tax, declared value excess profits tax, excess profits tax and additions to the tax under section 293(b) of the Internal Revenue Code of 1939 due from the petitioner for the taxable years 1942 to 1945, inclusive, as follows:

Year	Deficiency	
	Income tax	Section 293(b) addition
1942	--	$ 32.08
	Declared value excess profits tax	
1942	$ 213.03	110.80
1943	13,452.18	6,726.09
1944	2,420.68	1,199.84
1945	779.38	341.81
1942	2,441.84	1,173.85
1943	118,437.94	59,218.97
1944	33,497.22	16,808.22
1945	14,771.64	6,895.42

Entered: August 3, 1965

(Signed) Irene F. Scott

Judge

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

W. R. JACKSON,

Petitioner

vs.

TAX COURT
DOCKET NO. 70811

COMMISSIONER OF
INTERNAL REVENUE

Respondent

PETITION FOR REVIEW

Comes now W. R. Jackson, the Petitioner in the above entitled cause, by his attorney, Richard P. Jahn, and hereby petitions the United States Court of Appeals for the Sixth Circuit to review the decision entered by the Tax Court of the United States on August 3, 1965, in the above captioned case ordering and deciding that there were tax deficiencies and additions to tax for the taxable periods shown as follows:

Calendar Year Taxable Period Involved	Total Deficiencies Decided by the Court	
	Income Tax	Additions to Tax (IRC of 1939, Section 293(b))
1942	12,630.14	6,315.07
	Income and Victory Tax	
1943	162,882.72	82,412.58

Calendar Year Taxable Period Involved	Total Deficiencies Decided by the Court	
	Income Tax	Additions to Tax (IRC of 1939, Section 293(b))
1944	25,500.37	12,750.19
	Income Tax	
1945	10,531.13	5,265.57

Throughout the taxable periods involved Petitioner filed his returns in question with the Collector of Internal Revenue for the District of Tennessee whose office was located at Nashville, Tennessee within the jurisdiction of the United States Court of Appeals for the Sixth Circuit.

This Petition for Review is filed pursuant to the provisions of Rule 12 of the U. S. Court of Appeals for the Sixth Circuit and pursuant to the provisions of Sections 7482 and 7483 of the 1954 Internal Revenue Code.

/s/ Richard P. Jahn
Attorney for Petitioner
Twelfth Floor, Volunteer Building
Chattanooga, Tennessee

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

WILLIAM R. AND ALICE J. JACKSON,

Petitioners,

vs.

TAX COURT
DOCKET NO. 70812

COMMISSIONER OF INTERNAL REVENUE,

Respondent

PETITION FOR REVIEW

Come now William R. and Alice J. Jackson, the Petitioners in the above entitled cause, by their attorney, Richard P. Jahn, and hereby petition the United States Court of Appeals for the Sixth Circuit to review the decision entered by the Tax Court of the United States on August 3, 1965, in the above captioned case ordering and deciding that there were tax deficiencies and additions to tax for the taxable periods shown as follows:

Calendar Year Taxable Period Involved	Total Deficiencies Decided by the Court	
	Income Tax	Additions to Tax (IRC of 1939, Section 293 (b))
1948	226.16	-0-
1949	402.96	-0-

Throughout the taxable periods involved Petitioners filed their returns in question with the Collector of Internal Revenue for the District of Tennessee whose office was located at Nashville, Tennessee within the jurisdiction of the United States Court of Appeals for the Sixth Circuit

This Petition for Review is filed pursuant to the provisions of Rule 12 of the U. S. Court of Appeals for the Sixth Circuit and pursuant to the provisions of Sections 7482 and 7483 of the 1954 Internal Revenue Code.

/s/ Richard P. Jahn
Attorney for Petitioners
Twelfth Floor, Volunteer Building
Chattanooga, Tennessee

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

CLEVELAND CHAIR CO.,

Petitioner

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent

TAX COURT DOCKET NO. 70813

PETITION FOR REVIEW

Comes now Cleveland Chair Co., the Petitioner in the above entitled cause, by its attorney, Richard P. Jahn, and hereby petitions the United States Court of Appeals for the Sixth Circuit to review the decision entered by the Tax Court of the United States on August 3, 1965, in the above captioned case ordering and deciding that there were tax deficiencies and additions to tax for the taxable periods shown as follows:

Calendar Year Taxable Period Involved	Total Deficiencies Decided by the Court	
	Income Tax	Additions to Tax (IRC of 1939, Section 293(b))
1942	-0-	32.08
	Declared Value Excess Profits Tax	
1942	213.03	110.80

Calendar Year Taxable Period Involved	Total Deficiencies Decided by the Court	
	Income Tax	Additions to Tax (IRC of 1939, Section 293(b))
	Declared Value Excess Profits Tax	
1943	13,452.18	6,726.09
1944	2,420.68	1,199.84
1945	779.38	341.81
1942	2,441.84	1,173.85
1943	118,437.94	59,218.97
1944	33,497.92	16,808.22
1945	14,771.64	6,895.42

Throughout the taxable periods involved Petitioner filed its returns in question with the Collector of Internal Revenue for the District of Tennessee whose office was located at Nashville, Tennessee within the jurisdiction of the United States Court of Appeals for the Sixth Circuit.

This Petition for Review is filed pursuant to the provisions of Rule 12 of the U. S. Court of Appeals for the Sixth Circuit and pursuant to the provisions of Sec-

tions 7482 and 7483 of the 1954 Internal Revenue Code.

/s/ Richard P. Jahn
Attorney for Petitioner
12th Floor, Volunteer
Building
Chattanooga, Tennessee

In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 716

WILLIAM R. JACKSON, WILLIAM R. AND ALICE J. JACKSON, CLEVELAND CHAIR COMPANY, PETITIONERS

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

The question here is whether the court of appeals properly sustained the Tax Court's finding (R. 1230a)[1] that there were, in the years 1942 through 1945, fraudulent understatements of the income of William R. Jackson and his wife, Alice J. Jackson, their partnership, Jackson Manufacturing Company, and their wholly-owned corporation, Cleveland Chair Company. There is ample evidence to sustain the Tax Court's findings. That court properly placed the burden of proof. There is no conflict or other ground for further review.

1. Petitioner[2] conceded in the Tax Court that the gross sales of Cleveland Chair Company and Jackson

[1] "R." references are to the joint appendix in the court of appeals.

[2] William R. Jackson is referred to as "petitioner." Alice J. Jackson is a party here because joint returns were filed for the years in question. The Tax Court declined to find that she had personally committed fraud (R. 1230a–1231a).

Manufacturing Company had been understated by about $256,000 and $309,000, respectively, but contended that at least an equal amount had been expended to purchase materials on the black market, and had not been taken as deductions (Pet. App. A2). Had black market purchases in these amounts been shown, petitioner would have been entitled to deductions sufficient to offset the unreported income and thereby negate any tax deficiencies and any charge of fraud.

The Commissioner, in asserting the deficiencies, gave taxpayer no credit for such black market purchases. Thereafter, petitioner showed that there had been some such purchases and that the Commissioner's determination was erroneous. Under the rule of *Helvering* v. *Taylor*, 293 U.S. 507, this removed the presumption of correctness attaching to the Commissioner's determination and left the matter to be resolved in the Tax Court on the basis of the actual evidence submitted, with the Commissioner having the burden of going forward.[3] This he did. The revenue agent on the case testified that petitioner's office manager had admitted during the audit that the black market purchases had amounted only to between $75,000 and $100,000 (R. 1089a–1090a). Although called as a witness on behalf of petitioner, the office manager did not deny this admission, but testified in general terms that all of the unreported receipts had gone toward black

[3] Petitioner, however, was left with the burden of persuasion. *United Aniline Co.* v. *Commissioner*, 316 F. 2d 701, 704 (C.A. 1).

market purchases. No other evidence was produced in support of the claimed amount of deduction. The Tax Court, as trier of the facts, was within its province in disregarding the office manager's trial testimony and finding in accord with his original, undenied statements to the agent (R. 1239a, 1243a).

Thus, contrary to the petitioner's contention (Pet. 25–34), the presumption of correctness attaching to an unrefuted deficiency determination played no part in the Tax Court's findings, so that there is no inconsistency with *Helvering* v. *Taylor, supra.* Nor did the Tax Court require petitioner to prove the correct amount of black market purchases. The petitioner was required, in order to avoid a deficiency, only to impeach or overcome the Commissioner's evidence that no more than $100,000 of such purchases had been made.

The Tax Court consequently found for the Commissioner not because of petitioner's failure to prove the correct amount of tax, but rather for his failure to overcome or discredit the Commissioner's evidence that the maximum amount of black market purchases was $100,000.[4]

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[4] The cases petitioner alleges to be in conflict with the decision here hold only that once a taxpayer presents evidence that the deficiency determination was incorrect, the determination can play no further part in establishing the amount of liability and any finding of liability must be based on evidence of record in the Tax Court—a principle which was fully observed in the proceedings below. See *Cohen* v. *Commissioner*, 266 F. 2d 5 (C.A. 8); *Richardson* v. *Commissioner*, 264 F. 2d 400 (C.A. 4); *Harp* v. *Commissioner*, 263 F. 2d 139 (C.A. 6); *Cullers* v. *Commissioner*, 237 F. 2d 611 (C.A. 8).

2. Petitioner is also wrong in contending (Pet. 39–43) that the Tax Court failed to place on the Commissioner the burden of proving that some part of the deficiencies was due to fraud. Petitioner admitted that during the period 1942 through 1945, more than $500,000 was deposited in bank accounts under fictitious names. He complains here of the Tax Court's rejection of his argument that these accounts were created without his knowledge by a bank official who had engaged in various other fraudulent activities. The Tax Court's rejection of this explanation was based on evidence showing manipulation of petitioner's companies' books, and on evidence tracing some $184,000 of these fictitious deposits to petitioner's personal account (Pet. App. A4–A5). On this record the court of appeals correctly ruled that the Commissioner's evidence of fraud was "clear and convincing."

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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